

IN THE MATTER OF JOHN KENNETH HYLAND - solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mr. J.N. Barnecutt
Mr. M.C. Baughan

Date Of Hearing: 26th September 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 on the 5th June 1995 by Roger Field solicitor, 31 Wolverhampton Street, Dudley, West Midlands that John Kenneth Hyland solicitor of _____, Biddulph, Stoke-on-Trent might be required to answer the allegations contained in the statement which accompanied the allegation and 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 a client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;
- (iii) failed to disclose information material to a transaction to his client;
- (iv) utilised clients' funds for the purposes of another client;

- (v) utilised clients' funds for his own purposes.

On the 8th September, the applicant made a further allegation against the respondent, namely that he had failed, notwithstanding the provisions of Section 34 of the Solicitors Act 1974 Para. 6, and the Rules made thereunder, to deliver within time an accountant's report in respect of his practice as a solicitor.

The application was heard at the Courtroom, No.60 Carey Street, London WC2 on the 26th September 1995 when Roger Field solicitor and partner in the firm of Higgs & Sons 31 Inhedge House, 31 Wolverhampton Street, Dudley appeared for the applicant and the respondent was represented by Mr. J. Murphy, of Eric Whitehead & Co., 6 Water Street, Newcastle Under Lyme, Staffordshire.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent, John Kenneth Hyland of Biddulph, Stoke-on-Trent be Struck off the Roll of Solicitors, and they further Ordered that he do pay the applicant's costs fixed in the sum of £990.00 and the Investigating Accountant's costs to be taxed if not agreed.

The facts are set out in paragraphs 1 to 13 hereunder

1. The respondent was admitted as a solicitor in 1975 and at all material times carried on practice on his own account under the style of Hylands at 16 High Street, Biddulph, Stoke on Trent, and at 4 Queen's Parade, Iron Market, Newcastle-under-Lyme. On the 28th April 1995 the Law Society intervened in his practice.
2. Upon due notice to the respondent the Investigating Accountant of the Law Society carried out an inspection of the respondent's books of account. The Investigation Accountant's report of the 25th April revealed that the books of account were not in compliance with the Solicitors Accounts Rules 1991 for the reasons noted below.
3. A list of liabilities to clients at 31st March 1995, was produced for inspection and totalled, after adjustment, £560,230.63. The items were in agreement with the balances shown in the clients' ledger, however, the respondent agreed that a further liability of £535,107.38 existed in respect of improper payments made from client bank account. A comparison of its total, together with the liability not shown by the books, with cash held on client bank accounts at that date, after allowance for uncleared items, showed the following position:-

Liabilities to Clients Per The Books	560,230.63
Liability Not Shown By The Books	<u>535,107.38</u>
	1,095,338.01
Cash Available	560,230.63
Cash Shortage	<u>535,107.38</u>

4. The respondent said that he was not in a position to replace the cash shortage of £535,107.38, but he would inform the Bureau if, and when, he had done so.
5. The cash shortage was caused by two payments made from the client bank account of £523,801.13 and £11,306.25 respectively, in the circumstances noted below, which the respondent agreed were improper.
6. The respondent said that he was approached by Mr. M., whom he had previously not known, to act on his behalf in the purchase of certain properties, the vendor being The Secretary of State for Foreign and Commonwealth Affairs.
7. On 29th August 1991 the Nationwide Building Society issued instructions to the respondent to act on their behalf in connection with their advance of £2,000,000.00 to Mr. M. to assist him with his purchases based on a contracted purchase price of £3,000,000.00.
8. It was apparent from the examination of the client matter file that as early as 25th July 1991, the respondent had been informed by the Treasury Solicitor, who was acting for the vendor, that the agreed purchase price was to be £1,875,125.00 although this was subsequently negotiated downwards to £1,650,000.00 by the respondent. He admitted to the Investigating Accountant, Mr. Duerden, that at no time did he inform his building society client of the real purchase price and, he further agreed that if the building society had been aware of the correct purchase price, then it was unlikely that they would have agreed to a mortgage loan of £2,000,000.00
9. On 6th September 1991, £2,000,000.00 was received from the Nationwide Anglia Building Society and credited to the relevant account in the client ledger, thereby increasing the credit balance thereon to £2,022,512.50. Completion was effected by the payment of £1,485,500.00 which had the effect of reducing the balance to £537,012.50. On the 6th September 1991 the payment out of client account of £523,801.13 made payable to Palladium Investments was made, leaving a balance on client account of some £13,211.37. On the 19th February 1992 a payment in cash was made to Mr. E. of £11,306.25 leaving a nil balance on client account.
10. The Respondent said that following instructions from Mr.M., he had transferred £523,801.13, to a bank account in the name of Palladium Investments Limited, a company in which the respondent said Mr. M. had an interest, at Midland Bank Trust Corporation (Jersey) Limited. The respondent admitted to Mr. Duerden that this payment was not made in respect of the purchase of the property and that it was improper.
11. The respondent admitted to Mr. Duerden that the payment dated 19th February 1992 for £11,306.25, which was annotated on both the client ledger card and the cheque book stub (chq. no. 742071) as being made payable to Mr. M., was in fact drawn by himself, in cash. He further admitted that the payment represented an inducement, offered by Mr.M., for the respondent to continue acting in what he knew to be a dishonest transaction.

12. The client matter file included a copy of a contract drawn up by the respondent, showing a purported sale from Palladium Investments Limited to Mr.M. personally, of the aforementioned properties for a consideration of £3,000,000.00. The respondent said that the purpose of this contract had been to hide from the building society the true purchase price by implying that the full contract price had been paid on a contemporaneous back to back transaction. No such transaction ever took place and the respondent agreed that his actions were dishonest.
13. The respondent's accountant's report for the year ending 31st October 1994 should have been delivered by 30th April 1995. It was not so delivered and was still outstanding.

The Submissions of the Applicant

14. The Investigating Accountant's report revealed that the respondent was a party to mortgage fraud on his building society client. He failed to inform his building society of the material fact of the reduced purchase price and he acknowledged that if they had known of the true price, they would not have advanced £2,000,000.00. This was done in collaboration with his client Mr.M. Monies were then transferred from client bank account to a company in which the client had an interest. The other payment to the client Mr.M. of £11,000 represented the inducement to the respondent as outlined in the Investigating Accountants report. The file further demonstrated a back to back transaction was set up in order to conceal the impropriety.
15. This was a case of outright dishonesty and unquestionably would bring the profession into disrepute. The Compensation Fund had received eighty applications. So far, a sum of £572.26 had been paid out and further claims totalling £52,887 were pending. It might seem surprising that the claims were so modest but it could well be because the building society client was pursuing recovery through another party. However it was acknowledged that they had no doubt reserved their right to go to the Fund if necessary. At present no claims had been received from them. The matters in the supplementary affidavit were not of the same seriousness.

The submissions of the Respondent

16. The matters had been fairly outlined by the applicant but it was hoped that the respondent was able to put forward some mitigating factors for his actions. He did not seek in so doing to displace the patent dishonesty which had taken place.
17. Facing allegations such as these, a Tribunal in general would appear to have little alternative but to strike off a solicitor. No-one could argue if that indeed were the conclusion of this Tribunal at the end of the day.
18. Dealing first however with the lesser allegation of the late accountant's report, it should be noted that the Investigation Accountant visited on the 18th April 1995. The respondent's accountant's report should have been in by the end of April 1995 and indeed his accountant had already commenced an audit, at the time the inspection was in progress. It was due to have been filed within a proper time, but following on from

the inspection, the respondent was unable to pay his accountant's fees and at the end of the day attempts to file the report were abandoned.

19. It was admitted however that the other matters facing the respondent today were considerably more serious. He was aged 44. He was admitted 20 years ago. He had set up in practice as a sole practitioner early in 1977 in Biddulph, North Staffordshire. This was really an expanded village of some 20,000 people and at that time there were three firms in the area. The respondent carried on profitably as a sole practitioner for some eleven years until 1988. He was very well thought of. His practice was largely conveyancing and probate. His wife was deputy headmistress of a local school and the respondent himself was Chairman of the local RoundTable.
20. In 1988 he began to find that his financial position deteriorated. He had to take a bank overdraft of some £50,000 in order to purchase his freehold premises in Biddulph. At that time the property was valued at £80,000. Additionally, this was the time of the conveyancing boom and this encouraged the respondent to embark upon two areas of expansion - both of which in the event proved disastrous.
21. In June 1988 the respondent opened a branch of his office in Newcastle Under Lyme. This was a larger town some twelve to thirteen miles away. He set up a cut-price conveyancing shop. The cost in setting up involved borrowing from the bank a sum in the region of £32,500. He ran this most unprofitably from mid 1988 until the intervention in April 1995. Not only did the practice in Newcastle-under-Lyme never make any profit at all it was running at a loss every year, until the debt at that practice amounted to some £29,000.
22. In addition the respondent, started an estate agency in Biddulph in June 1989. This lasted until August 1992. His conveyancing practice in Biddulph suffered greatly from the depression and the estate agency lost a minimum of £75,000 in wasted wages and advertising.
23. By the summer of 1991 his overdraft had risen from £50,000 to £175,000. His practice was dead, his estate agency was finished, and he was subject to constant pressure from the bank two to three times a week.
24. In July 1991 the respondent was instructed to purchase the two properties in London which were the subject of the allegations.
25. They were both substantial properties, indeed one was an ex-Embassy. The respondent was instructed by a client he did not know, and had never even met - Mr. M. He was introduced to Mr. M. by a financial broker in Manchester. Mr.M. described himself as an architect from London. He asked the respondent for a quote and in due course instructed him to act on the purchase at a price of £1.8 million. One had to question, in hindsight, whether Mr.M. had chosen the respondent because he was a sole practitioner. In any event the respondent took no part whatsoever in arranging the mortgage. That was done entirely by Mr.M. From the respondent's point of view, the instructions from Mr.M. appeared as manna from heaven. He had quoted a conveyancing cost as being £1,500 plus VAT and indeed those were the costs that were ultimately charged by the respondent.

26. During the course of negotiations with the client, the respondent was subjected to pressure to complete. At the same time, the client was looking for a price reduction and the client asked the respondent to try and negotiate a price reduction for him. It was put to the respondent that if he could negotiate a price reduction he, the respondent, would be paid 5% of the amount reduced. Several surveyors reports were supplied by the client and the respondent was able to obtain a reduction down to £1.65 million. This took place over several weeks. The transaction at this stage was still honest as far as the respondent was concerned. The 5% of the price reduction for £1.65 million represented the £11,000 payment to the respondent which appeared in the Investigation Accountants report.
27. In due course the mortgage instructions arrived. They showed a purchase price of £3 million with an advance of £2 million. This information was clearly stated in the mortgage instructions but it was the first time the respondent knew anything about this. Obviously the building society had their own valuer and the respondent had had no contact with the building society or the valuer hitherto. The respondent contacted the client and said that the figures were wrong and he must declare the correct situation to the building society. The client objected strenuously. He needed the money for repairs and told the respondent that he had done such transactions before and there had been no problem. The client persuaded the respondent that a great deal of money had to be spent on the property and then it could then be sold for £5 million. Nothing would go wrong if it were not reported to the Building Society. It was at this point for the first time that dishonesty occurred. The client persuaded the respondent that the property was, in effect, already sold and that nobody would lose out. The respondent considered that £11,000 that he had earned in negotiating the price reduction plus his conveyancing costs would come in very useful. The client in any event told the respondent that if he would not proceed with the transaction, he the client, would get another solicitor to do it for him.
28. In a moment of aberration, the respondent threw caution to the wind and signed the report on title.
29. The client paid a 10% deposit leaving the remainder to be paid on completion. A false contract was drawn up making it appear that Palladium Investments had sold the property to Mr.M. personally for £3 million.
30. It would be seen that the respondent did not draw his commission from the client until February 1992. For a long time he did not know how to ask for the money. In the event a cash withdrawal was made from client account to the client who paid it over to the respondent.
31. The client obviously knew what was going on from the outset. He had set up an off-shore company to siphon away the funds. It was to be wondered whether the incentive offered to the respondent as to price reduction was merely part of the incitement to draw him more closely into the transaction. It must be repeated that the respondent had never met nor seen the client. The respondent's life had been destroyed by this man.

32. He had been married for twenty two years. His wife was still standing by him. The whole incident had caused much trauma in this small town. The respondent had four children still at school, aged between six and sixteen years old. He had not attempted to practice since the intervention in April this year. He had managed to get a job disassociated from the law as a trainee freight forwarder. He was employed in Biddulph, and had been for the last four months, earning approximately £200 a week. His own substantial property in Biddulph had been sold and the whole of the proceeds had gone to the Bank. He was still owing some £60,000 to the Bank. His office premises were for sale and they too were secured to the Bank. There were a minimum of £40,000 other business liabilities - these were largely unsecured. The respondent would certainly go bankrupt. Additionally, he was unsure as yet what other proceedings might follow against him as a result of this transaction.
33. It would be hoped that the Tribunal could consider they could give him some credit for his performance as a solicitor prior to these matters. Apart from this one lapse, the respondent had been in honest practice since 1977. He then committed this horrendous, stupid mistake. Once the matter was spotted by the Investigation Accountant, the respondent co-operated fully and handed over the file intact. The Investigation Accountant's report revealed that at the time of the investigation, the respondent had a substantial amount of client money on client account belonging to numerous other clients and none of these monies had been interfered with by the respondent. He had simply made one huge mistake and would live to regret it for the rest of his days.
34. The respondent deeply regretted his actions and apologised to the Building Society and to the profession.

On the 25th August 1982 the Tribunal FOUND the following allegations to have been substantiated, namely;

- (i) the respondent had failed to comply with the Solicitors Accounts Rules 1975 in that he:
- (a) notwithstanding the provisions of Rule 11(1) of the said Rules failed at all times to keep his accounts written up;
 - (b) notwithstanding the provisions of Rule 8 of the said Rules drew out of client account money other than that permitted by Rule 7 of the said Rules.
 - (c) notwithstanding the provisions of Rule 3 of the said Rules failed without delay to pay clients' money into a client account
- (ii) the respondent had been guilty of conduct unbecoming a Solicitor in that he had:
- (a) utilised money held and received by him on behalf of clients for the purposes of other clients;
 - (b) failed to deliver pursuant to the provisions of the Solicitors Act 1974 an

Accountant's Report in respect of his practice as a solicitor for the accounting period the 1st November 1979 to 31st October 1980;

- (c) practised as a solicitor without there being in force a Practising Certificate issued in accordance with Part 1 of the Solicitors Act 1974 in respect of the period from 1st November 1981 to the 25th February 1982.

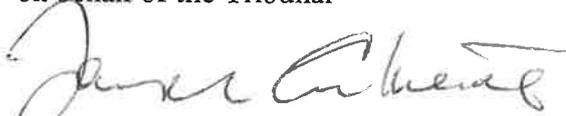
On that occasion the respondent was fined a penalty of £250.00.

The Tribunal accepted that there was no dishonesty in the past. On that occasion the books were not up to date and he was fined. They were not swayed in their decision today by those previous matters.

Notwithstanding the matters urged in mitigation on behalf of the respondent, the Tribunal had no hesitation in concluding that it was their duty to impose the ultimate sanction against the respondent. Although the Tribunal accepted that the respondent did not originally enter into the transaction with dishonest intent, he allowed himself to be persuaded and manipulated and dishonestly represented to his building society client that the price was very much greater than it actually was. All this was done in the knowledge that if he had made full disclosure to the building society client, then they would not have lent the very large sum of money that was actually advanced. Moreover, the respondent had colluded with the client in purporting to cover up the transaction by laying a false trail in the files. The participation of a solicitor was necessary to complete the fraudulent transaction and the respondent, knowing that it was wrong, failed to have the courage of his convictions to refuse to participate. The respondent was not fit to be a solicitor and an Order striking the respondent off the Roll of Solicitors was made accordingly.

DATED this 6th day of November 1995

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

*Findings filed with the
Law Society on the 10th
day of November 1995*