

IN THE MATTER OF WILLIAM NOEL ARTHUR HORNER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. P Hodson (in the Chair)

Mr. D J Leverton

Dame Simone Prendergast

Date Of Hearing: 23rd 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 David Rowland Swift, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead on the 5th June 1995 that William Noel Arthur Horner of \_\_\_\_\_, Tresillian, Truro, Cornwall solicitor might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the commencement of the hearing the applicant told the Tribunal that he sought to withdraw two allegations. The Tribunal consented. The allegations are set out below in the agreed amended form.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that he had:-

- (i) failed, on being required to do so, to produce his Books of Account for inspection by the Investigating Accountant of the Law Society contrary to Rule 27(2) of the Solicitors Accounts Rules 1991;

- (ii) failed to comply with a professional undertaking;
- (iii) failed to account for funds handled by him in his capacity as a solicitor;
- (iv) failed to comply with a Deposit Interest Certificate issued pursuant to the Solicitors Accounts (Deposit Interest) Rules 1975;
- (v) contrary to Paragraph 9 of Part 11 of the 1st Schedule of the Solicitors Act 1974 failed to deliver up to the agent of the Law Society all papers and documents in connection with his practice as a solicitor or any controlled trust;
- (vi) failed to co-operate with the Law Society and/or the agent of the Law Society following intervention into his practice.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 23rd November 1995 when David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent did not appear and was not represented.

On the day prior to the hearing the respondent addressed a letter to the Tribunal to which was attached a document headed "Comments on charges brought against me by the Law Society" The Tribunal has taken note of those comments.

The evidence before the Tribunal included the admissions of the respondent (contained in the before-mentioned document dated the 22nd November 1995) of allegations (ii), (iii) and (iv). The respondent confirmed in his letter that he did not require the applicant to call any witnesses.

At the conclusion of the hearing the Tribunal ORDERED that the respondent William Noel Arthur Horner of Tresillian, Truro, Cornwall be Struck off the Roll of solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court.

The facts are set out in paragraphs 1 to 12 hereunder:-

1. The respondent, born in 1942, was admitted a solicitor in 1969. At the material times he practised on his own account under the style of Noel Horner at 73 Lemon Street, Truro, Cornwall.
2. On the 19th January 1995 the Law Society resolved to intervene in the respondent's practice and the intervention was effected on the 23rd January 1995.
3. Upon due notice to the respondent, the Investigation Accountant of the Law Society attended at the respondent's offices on the 12th January 1995 and again on the 18th January in order to carry out an inspection of the respondent's Books of Account. The respondent did not attend at his offices on either occasion and did not produce his Books of Account for inspection.

4. On the 13th July 1994 the Adjudication and Appeals Committee of the Law Society certified pursuant to Rule 4 of the Solicitors Accounts (Deposit Interest) Rules 1975 that the respondent should pay interest on sums held by him on behalf of Mr H within 28 days. The sums involved were £100,000 from the 12th August to the 18th August 1985, £45,000 from the 27th May to 3rd June 1986 and £112,500 from the 28th September until the 8th October 1986. The respondent failed to comply.
5.
  - (i) On the 24th August 1994 Messrs Lindley Johnstone solicitors of Bristol complained to the Solicitors Complaints Bureau ( The Bureau) that the respondent was in breach of his undertakings. Messrs. Lindley Johnstone acted for the vendors of property to clients for whom the respondent acted. Contracts were exchanged on the 3rd August 1994 pursuant to the Law Society "Formula B" under the terms of which the respondent undertook to send the signed contract and deposit to Messrs Lindley Johnstone by First Class post that day. In breach of his undertaking the respondent did not forward the signed contract and deposit to Messrs Lindley Johnstone until the 8th August 1994.
  - (ii) On the 5th December 1994 the Bureau wrote to the respondent seeking explanation. The respondent replied on the 16th December 1994 stating that the incident was minor and little more could have been done but offered no explanation for the delay of five days.
6.
  - (i) On the 4th October 1994 Messrs Silvermans solicitors of Barnet complained to the Bureau that the respondent was in breach of a professional undertaking. The respondent acted for I.D.F. Consultants in connection with the proposed purchase of property at Kensington Square from clients for whom Messrs. Silvermans acted. Contracts were exchanged without deposit on the basis of the respondent's undertaking to pay the whole of the purchase price on the 16th September 1994 from the sale of securities, said to be worth £1,600,000, that he held. The respondent failed to pay the purchase price on the 16th September or at all notwithstanding that he indicated to Messrs. Silvermans that he was merely awaiting clearance of funds from the sale of the securities.
  - (ii) On the 5th December 1994 the Bureau wrote to the respondent seeking explanation. The respondent replied on the 16th December 1994 asserting that his undertaking was conditional and that as a result there was no breach. In his written comments the respondent continued to maintain that the undertaking was conditional upon the sale.
7.
  - (i) On the 22nd November 1994 Messrs Hewitson Becke & Shaw solicitors of Cambridge complained to the Bureau that the respondent was in breach of two professional undertakings. The respondent acted for H.D.S. Ltd. on the purchase of a business from E.H. Plc. On the 18th August 1994 the respondent undertook to procure duly executed assignments and transfer in respect of the property comprised in the sale and to forward copies of the same to Hewitson Becke & Shaw, who acted for E.H. Plc. within two days. The respondent failed to do so. Further on the 18th August 1994 the respondent

undertook to pay the sum of £340,000 on or before the 18th November 1994. The respondent failed to do so.

- (ii) On the 5th December 1994 the Bureau wrote to the respondent seeking explanation. The respondent replied on the 16th December 1994 indicating that the matter was subjudice. He did not offer any other explanation or comment. In his written comments the respondent accepted the position.
- 8.
- (i) On the 12th January 1995 Messrs Bond Pearce solicitors of Plymouth complained to the Bureau that the respondent had failed to account to his clients Mr J, Mrs J, F.D. Ltd, Mr H and Mrs H in connection with funds received on their behalf. The various parties were related and the limited company was a building company operated by the J family.
  - (ii) Mr and Mrs H owned property which they intended to sell. Mr and Mrs J owned land adjacent thereto and agreed to the sale of that land to achieve an enhanced purchase price for the whole. The respondent was instructed on the sale. A sum of £2,500 was paid in cash to the respondent by Mr and Mrs H to secure release of a charge to the Midland Bank. Completion of the sale took place on the 14th October 1994 and the completion moneys of £65,000, were paid to the respondent.
  - (iii) Mr & Mrs H had an outstanding mortgage on their property with Abbey National Building Society and owed money to Midland bank. The mortgage was to be discharged by the respondent from the proceeds of sale but was not discharged.
  - (iv) Mr and Mrs H contracted to purchase a property and obtained a mortgage from Abbey National Building Society in the sum of £30,000 to facilitate the purchase. On completion the sum of £30,000 was to be paid to Midland Bank. The sum of £30,000 was sent to the respondent by Abbey National Building Society on the 28th November 1994. The respondent did not remit those moneys to the Bank, and never accounted for what became of them.
  - (v) Mr J was the owner of F.D. Ltd. The respondent acted for that company on the sale of a caravan park in Penzance and received the proceeds of sale. A sum of £85,000 was to be held by the respondent in respect of a retention against roadworks. The respondent had not paid over the sum nor had he given any indication of what had happened to those funds. In his comments the respondent accepted he had failed to account for sums handled by him.
- 9.
- (i) On the 19th January 1995 Abbey National Building Society complained to the Bureau that the respondent had failed to return title deeds or account for funds.
  - (ii) In the case of Mr & Mrs H's property the respondent acted for the Society and the borrower on the sale and redemption but failed to forward the title deeds or account for the advance of £135,000 on sale of the property on the 14th October 1994.

- (iii) In the case of Mr & Mrs H's purchase the respondent acted for the Society and the purported purchasers. The sum of £30,000 was forwarded to the respondent on the 14th November 1994 but the vendor received no funds and the title deeds had not been forwarded to the Society.
  - (iv) In another case the respondent acted as solicitor for the Society and the borrower on a sale and redemption on the 13th December 1994 but failed to forward the sum of £31,384.91 to the Society.
  - (v) The respondent had failed to return to the Society the title deeds in respect of two properties. The respondent said that all deeds due back had been returned.
  - (vi) Correspondence and telephone enquiries from the Society had not met with response from the respondent. In his comments the respondent accepted that he had not accounted for those sums.
10. On the 15th February 1995 Messrs Matthew & Matthew solicitors of Bournemouth complained to the Bureau that the respondent had acted for their client Miss G-L in connection with the sale of property. The sale was in a sum of £65,000 and a deposit of £3,500 was paid by the purchaser. The transaction was completed on the 1st December 1994 and the completion moneys, a sum of £61,500, were paid to the respondent. The respondent retained the sums received and failed to account to his client, which the respondent accepted in his written comments.
11. On the 14th March 1995 Messrs Ungoed Thomas & King solicitors of Carmarthen complained to the Bureau that the respondent undertook to pay to Mr M the sum of £25,000 on the 1st March 1995. On the 3rd January 1995 the respondent further undertook to repay to Mr M the sum of £25,000 in 28 days. The respondent did not comply with these undertakings. A cheque for £50,000 sent to Mr M on the 10th March 1995 was not honoured. The respondent said he did not think the undertakings were signed by him: Mr M was never a client.
12. (i) On the 19th January 1995 the Adjudication and Appeals Committee of the Law Society resolved to intervene in the respondent's practice pursuant to Section 35 and Part 11 of the 1st Schedule of the Solicitors Act 1974. Notice of the intervention was served upon the respondent and his bank. On the 23rd January 1995 the agent of the Law Society attended at the respondent's offices at 73 Lemon Street, Truro, Cornwall to take charge of the respondent's files and papers. Upon gaining access by virtue of an Order of the High Court the agent found that the office was equipped but unoccupied. There were no documents, files or papers all of which appeared to have been removed from the premises. Subsequently the agent of the Law Society visited Tregeagle Manor, Tresillian, Truro, Cornwall. It was ascertained that the respondent was residing there but he was not in the premises. The respondent then spoke to the office of the agent of the Law Society. The agent of the Law Society then understood that the respondent had removed all papers and documents in his possession in connection with his practice as a solicitor from his offices to Tregeagle Manor where he was residing. The agent sought the co-operation of the respondent and the files, papers and documents but the respondent did

not provide the same. On the 6th March 1995 pursuant to a further Order of the High Court the agent of the Law Society again visited Tregeagle Manor. The respondent was present but said that he would not comply with the Order to produce all files and documents until he had legal advice which was not possible that day. The agent conducted a partial search of those premises being unable to gain access to all parts. No papers or documents were found and the agent was of the view that the respondent had removed all papers and documents in his possession in connection with his practice as a solicitor. A discussion with the respondent on the 7th March 1995 failed to produce a constructive response. On the 16th May 1995 pursuant to a further Order of the High Court the agent of the Law Society again visited Tregeagle Manor Tresillian Truro and conducted a full search of those premises. No papers or documents were found.

**The submissions of the applicant**

13. The applicant understood that the police were investigating the position of the respondent. At the time of the hearing he had not been arrested.
14. Following the Law Society's resolution to intervene in the respondent's practice he was obliged by Paragraph 9 of Part 11 of the 1st Schedule of the Solicitors Act 1974 to hand over to the agent of the Law Society all papers and documents in his possession in connection with his practice as a solicitor or any controlled trust and he failed to do so. Further he failed to provide any information that might assist in ascertaining the whereabouts of clients' files papers and funds. The respondent had indicated that he did not intend to co-operate with the Law Society and indicated that he would suggest that his failure to produce papers was the result of alcoholism or senile dementia. A solicitor who remained on the Roll had a duty to behave responsibly as a professional man.
15. The attention of the Tribunal was drawn to a bundle of copy correspondence placed before them which revealed the many attempts made to persuade the respondent to behave in a sensible manner. He still had not done so.
16. The respondent had admitted a number of matters. A clear picture as to the overall position had emerged. Claims received by the Law Society's Compensation Fund totalled £3,381,190.33. At the time of the hearing the Fund had already paid out a substantial sum. It was the solicitors' profession that would stand a very great loss as a result of the respondent's behaviour.

**The submissions of the respondent (contained in his before-mentioned letter and comments on charges brought against him by the Law Society referred to above and dated the 22nd November 1995).**

17. The respondent said that he had been unable to produce his Books of Account which he had already explained during the course of High Court proceedings taken against him by the Law Society.

18. The respondent accepted that he had given certain professional undertakings and that people had complained that he had failed to comply with them.
19. In connection with the complaint by Messrs. Silvermans, the respondent continued to maintain that the undertaking given by him was conditional. He also considered that the rescission of the contract by the vendor abrogated the respondent's undertaking to pay the purchase price.
20. In connection to the complaint by Messrs Hewitson Becke & Shaw, the respondent accepted that he was unable to forward copies of all executed documents to that firm. He relied on other solicitors to send him executed copies which were never sent to him. He accepted that he failed to pay £340,000 to E H Plc which was because the respondent's own clients never put him funds and he had no resources of his own from which he might draw. The respondent had learnt that it might well be that E H Plc had not fulfilled its own part of the contract to the respondent's clients in that not all assets which E H contracted to sell were handed over on completion. At the date of his letter, the respondent accepted that there was an undertaking and an order with which he had been unable to comply but if he could obtain sufficient evidence that E H's contractual obligations had not been fulfilled, the respondent would apply to have the order against him set aside.
21. The respondent accepted that he had failed to comply with a Deposit Interest Certificate. The respondent had appealed the decision and his appeal was not rejected until about November 1994. He did not consider that the information about amounts was wholly accurate. All amounts of interest claimed from the respondent were statute barred and the earlier amounts claimed were barred when the claims were made. The respondent said the certificate requiring him to pay the interest was contradictory and incapable of being complied with. The respondent had raised such matters in correspondence with the client who would not enter into correspondence. The respondent said he subsequently ran out of ability to pay the client any figure whether agreed or not.
22. The respondent said that his non co-operation upon the intervention had already been extensively canvassed in the High Court and he reiterated the explanations he gave in those proceedings. He disputed that he had failed to co-operate following intervention. He had written a letter dated the 1st March 1995 about the matter which he said had been ignored. In so far as he had been asked to help he had done the best he could.
23. The respondent said that his affairs had got into a mess in the previous year and a number of clients had been let down in consequence.
24. The problems had affected the respondent's health. His practice had been destroyed, his reputation had gone and both he and his family had suffered greatly.
25. The respondent said that his principal problem had arisen because he had lent money to certain clients which he was then unable to recover. It meant that he became unable to account to other clients for funds due to them. He regretted that much of the money

he lent would probably never be recovered as the main clients concerned, who were corporate clients, had their affairs in receivership.

26. The respondent apologised to those clients that he let down and the Law Society for damaging the reputation of the profession. He had not set out to be dishonest nor did he believe he had been. He accepted that the consequences of the mess had been grave for certain of his clients and he was very sorry.
27. The respondent did not attend the hearing as he could not afford to, remaining unemployed and drawing Income Support.
28. The Tribunal FOUND all of the allegations to have been substantiated. The respondent appeared to have dealt with clients' affairs and handled clients' monies without any regard to propriety or the rules by which members of his profession are bound. The Tribunal considered it extraordinary and wholly reprehensible behaviour for a solicitor not to produce his Books of Account and not to hand over papers and documents in connection with his practice as a solicitor or any controlled trust when the Law Society has resolved to intervene in his practice. It is undoubtedly conduct unbecoming for a solicitor to fail to co-operate with the Law Society or his agent following an intervention into his practice. The respondent has expressed his regret and apologised to clients who had suffered. His failings have led to a huge claim on the Law Society's Compensation Fund and it is because of the respondent's behaviour that other members of the solicitors' profession will have to replace monies apparently, upon the respondent's own admission, lent by him out of client account. The Tribunal takes the most serious view of the respondent's behaviour and it was right that he should be Struck Off the Roll of solicitors and ordered to pay the costs of and incidental to the application and enquiry.

DATED this 28th day of December 1995

on behalf of the Tribunal

*Philip Hodson*

P Hodson  
Chairman

Findings filed with the  
Law Society on the 9th  
day of January 1996