No. 6937/1995

IN THE MATTER OF SIR IAN SEYMOUR COLLETT, solicitor

\- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.E. Fordham (in the Chair)
Mr. P. Hodson
Mr. D.E. Marlow

Date Of Hearing: 26th 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 David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead, on the 10th July 1995 that Sir Ian Seymour Collett of Woodbridge, Suffolk might be required to answer the allegations set out in the statement which accompanied the allegation and that such Order might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely that he had;

(i) failed to account to his partners for funds belonging and/or due to his partners;

(ii) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drew money out of client account other than as permitted by Rule 7 of the said Rules;

(iii) utilised clients' funds for his own purposes;

(iv) misappropriated clients' funds;

(v) contrary to Rule 1 of the Solicitors Practice Rules behaved in the course of his practice as a solicitor in a way that compromised or was likely to compromise his good repute and/or that of the solicitors' profession.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 26th October 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 appeared in person.

The evidence before the Tribunal included certain admissions of the respondent as to the facts, the oral evidence of Robert James Wright, and the respondent addressed the Tribunal.

At the conclusion of the hearing the Tribunal ORDERED that the respondent be Struck Off the Roll of Solicitors and that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £2,287.80 inclusive.

The facts are set out in paragraphs 1 to 8 hereunder.

1. The respondent, born in 1953, was admitted a solicitor in 1979. At the material times the respondent practised in partnership under the style of Birkett Westthorpe & Long at 20-32 Museum Street, Ipswich. On the 9th February 1994 the remaining partners in the firm of Birkett Westthorpe & Long expelled the respondent from the partnership. The respondent had been a partner previously with a firm dealing with shipping law in Felixstowe. In October 1989 three local firms merged and the firm Birkett Westthorpe and Long was formed upon that merger. It was then that the respondent became a partner in that firm. The partners in the merged firm entered into a formal Partnership Deed.

2. The Deed provided that the partners in the firm should bring into account all fees and money received by individual partners. Mr. Wright, who gave evidence, had been the Managing Partner in the firm and in October 1993 he received disturbing reports of irregularities on the part of the respondent and Mr. Wright began an investigation.

3. This led to the discovery of two areas of concern. The first area was in connection with notarial fees charged by the respondent and the second aspect related to monies held on client account in connection with a client known as "S Marine". A third matter for concern was discovered after the respondent left the firm in connection with a client "FFF Ltd".

4. The respondent became a Notary Public as a number of documents connected with the shipping practice had to be notarised. The respondent was entitled to notarial fees for the services rendered as a notary public. Because of the relevant provision in the Partnership Deed, the respondent was under a duty to account to his partners for notarial fees. The respondent failed to account for and pay into the partnership all of the notarial fees he received during the years 1992 and 1993. The amount received by the respondent during 1992 amounted to £2,065.30. The respondent accounted for £410.00 to his partners. In explanation the respondent said that the partnership

allocated insufficient monies for the purposes of entertaining and to assist in the attraction of work. The respondent had therefore retained the balance of the notarial fees but had used such money for the benefit of his partners in promoting the firm. The respondent was not able to produce any evidence to support his contention that those monies had been so utilised. The respondent said that the partnership would not permit him to buy a computer printer for use at home, which he believed would have been of great benefit to the firm because of the nature of the work with which he dealt. He had utilised some of the money to buy such a printer which again was for the benefit of the firm. The respondent had been invited to speak at a seminar in the United States of America and was invited together with his wife. The partnership refused to fund the respondent's wife's expenses and the respondent met those expenses from monies in hand believing that to be a proper and correct use and, further that money was thus expended for the benefit of the partnership.

5. In 1993 the notarial fees received by the respondent totalled £3,366 but the respondent accounted to his partners for £258.80. The respondent said that the 1993 year end had not been reached and he would have accounted for the balance of monies to his partners but the time when he was to do so had not arisen. It was the applicant's case that the respondent had retained the large portion of notarial fees, for his own use and benefit.

6. In 1989 the respondent acted for "S Marine" which was a client based in the United States of America. On the 22nd November 1989 the respondent rendered a bill of costs to his client for work undertaken. The bill of costs was in sterling but the client discharged the bill by a payment in United States Dollars. As a consequence of changes in the exchange rate the client in effect made an overpayment of £122.75, which sum remained in client account credited to the ledger of "S Marine". On the 4th August 1992 the account was charged with a cash payment of £25 identified as a notarial fee. On the same date the account was charged with a cash payment of £53.60 described as travelling expenses. Finally on the 6th January 1993 the account was charged with a cash payment of £44.35 identified as a notarial fee. It was the applicant's position that all three payments were improper. They were all instigated by the respondent who received the sums and retained them for his own use and benefit.

7. From notes on the copy ledger, it appeared that when the respondent had become apprised of the quoted balance he had suggested "lets bill it as courier charge ......". It was the applicant's position that the respondent had suggested the use of a credit balance on client account against some false description. In the event that had not happened in that way. The respondent accepted the facts but contended that the credit balance on client account was not in fact client's money. It was his position that he might not have dealt with that money in a strictly correct way but he had not been guilty of any dishonesty or misuse of client's funds. The travelling expense claimed was a genuine one.

8. The third matter, which came to light after the respondent had left the firm, was one where the facts were not in dispute. In 1985 the respondent acted for "FFF Ltd", a client seeking to recover monies owing from a defendant in Denmark. That defendant went into liquidation in Denmark. In December 1991 a sum of £1,025.75 was received

from the Danish liquidator as a dividend and paid into client account. On the 8th December 1991 the account was charged with a payment of £1008.00 by a cheque payable to "R D". The payment was instigated by the respondent. Mr RD was a Director of a firm who had been employed by the respondent to carry out works at his home. The respondent also debited a payment on that account to P&O Ferries in the sum of £152.50. The respondent explained that he believed that to be a proper payment. A balance of £17.75 remained standing to the credit of the client account and that sum was used by the respondent to settle personal bills. The respondent agreed that this was an improper use of client's funds but in a technical sense only. The respondent told the Tribunal that he had already paid cash to a Director of his client company. It appeared that the client company had itself been the subject of a creditors' winding up and the respondent was unable to assist the Tribunal as to whether the Director had retained cash paid to him or had passed it to those acting on behalf of the company.

The Submissions of the Applicant

9. The respondent had been guilty of a serious breach of faith vis `a vis his partners. He said he had not acted dishonestly and had utilised notarial fees for the benefit of the firm. In reality the respondent had on one occasion used money to overcome a refusal by the firm to supply him with equipment requested by him.

10. The respondent was not able to supply any evidence as to what he did with the funds, and in the submission of the applicant it was clear that the respondent utilised them for his own purposes. The Tribunal was invited to consider whether the respondent's actions had gone beyond a breach of faith and had entered the realm of dishonesty.

11. With regard to the small credit balance on the "S Marine" ledger account following changes in currency exchange rates, it was the respondent's position that there had been no misuse of clients' funds. The travelling expense charged in that matter was a genuine one, the respondent also contended that this was not clients money and no breach of the Solicitors Accounts Rules arose. In the submission of the applicant that was not right. Both the Rules and pure common sense demonstrated that it was clients' money. In a sense it was an accidental overpayment by a client which ought to have been refunded to the client. There was no doubt in the applicant's mind that such money was clients' money. There was no basis upon which the respondent might argue that the money could have belonged to the firm. The clients would never have known and would never have been in a position to ask the respondent about the fictitious notarial fees and even if the travelling expenses charged against the ledger were genuine, they were not incurred in respect of the client on whose ledger the credit balance stood. In the submission of the applicant, that represented dishonesty in a broader sense. The respondent had been guilty of a deliberate taking of funds for a purpose other than those of the client.

12. In connection with "FFF Ltd" the respondent's firm had unexpectedly received small amounts of money following the liquidation of the Danish company, the defendant in proceedings where the respondent acted for the plaintiff. It was absolutely clear that payments had been made out of client account for the personal purposes of the respondent, a payment had been made to P&O Ferries and a sum had been paid to a

person who had undertaken work at the respondent's house. It was the applicant's case that the respondent deliberately made use of clients' funds. It was dishonest handling of a client's money.

13. In the submission of the applicant the sums of money involved were not great, but the respondent's handling of such monies was dishonest and such dishonesty impinged both upon the clients of his firm and the respondent's partners. That was a grave matter to which the Tribunal must give full consideration.

The Submissions of the Respondent

14. The respondent accepted that in each of the three matters specified by the applicant he had not treated the funds involved properly. He had not however been guilty of dishonesty. He apologised to the Tribunal. He said he did not underestimate the magnitude of an appearance before the Tribunal and he had to accept that he had made grave errors of judgement. He remained, however, firmly of the view that he had not dealt with clients' or firm's funds as was alleged against him.

15. The respondent's leaving his partnership, following his resignation and not his expulsion, had proved an extremely acrimonious matter and had led to litigation.

16. For the respondent it had been a difficult time professionally, financially and emotionally. The matter had been hanging over his head for a considerable period of time and throughout he sought to co-operate in every way with the Solicitors Complaints Bureau (the Bureau). The respondent was keen to have matters resolved as quickly as possible and, indeed, at one juncture a recommendation was prepared by a case worker for a committee of the Bureau that the respondent be severely rebuked and that a condition be placed on his Practising Certificate. The Committee had not followed the recommended course.

17. When the merger of three local firms was proposed, the respondent together with other prospective partners was not in favour. In due course negotiations led to the merger taking place and despite his misgivings the respondent was a member of the negotiating team. There had been a number of changes in the partnership, staff and offices with which the respondent had not entirely agreed. Of course the firm required greater profitability. Each department had a budget and expenditure was closely monitored. It was the view of the respondent that the allocation of budget had been dealt with haphazardly. The shipping department was always over budget.

18. The respondent had used notarial fees earned by him to pay for entertaining and other expenses of promoting the firm. The respondent's secretary had collected and kept a record of the notarial fees taken by the respondent.

19. With regard to the credit on client account arising from changes in currency exchange rates, the respondent said that he had sought the advice of the Ethics and Guidance Department of the Law Society who were unable to confirm whether or not that amounted to clients' money.

20. In the third matter of "FFF Ltd" the respondent had made four payments in cash to the Managing Director of that company totalling £1,028. The respondent accepted that he

received the benefit of £150, the balance on the ledger. He had agreed with the client that no bill would be rendered and that money should remain in the account. The respondent said he did not think through the matter fully but he denied very strongly that he had misappropriated clients' funds. The respondent accepted in connection with that matter that he should not have done what he did, but he wished to make it absolutely plain that he had held no dishonest intent.

21. The respondent accepted that he had not dealt with certain matters as he should have done. He at no time had formulated any dishonest intent and always had the best interests of his firm and his partners at the forefront of his mind. The consequences had been dramatic and out of all proportion. After his departure from the practice the respondent had suffered problems in finding employment, he had had to sell his house and had suffered from the stigma and loss of reputation which followed upon such matters. The steps which the respondent had taken had not, in his submission, merited the vilification which he had suffered.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal accept that the sums of money involved in this matter were not great, but the respondent's failures to be open and frank with his partners, and his utilisation of monies which belonged either to the partnership or to clients, although in his own mind entirely justified if not adhering strictly to the letter of the Accounts Rules, went , in the Tribunal's view rather further. A manipulation of small amounts of money which were unlikely to be missed by a solicitor for his own use and benefit, (and the Tribunal is in no doubt that such monies were applied for the use and benefit of the respondent,) reflected an unacceptably cavalier approach on the part of the respondent, and, indeed revealed a lack of candour and frankness which in the view of the Tribunal amounted to dishonesty.

It was right that the respondent should be Struck Off the Roll of Solicitors and the Tribunal Ordered that he pay the costs of and incidental to the application and enquiry.

DATED this 1st day of December 1995

on behalf of the Tribunal

Denys E. Fordham
Chairman

Findings filed with the Law Society on the 6th day of December 1995