

IN THE MATTER OF MALCOLM EUSTACE, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mrs. E. Stanley
Lady Bonham-Carter

Date Of Hearing: 5th December 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 14th August 1995 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Malcolm Eustace of

Boston, Lincolnshire, PE22

person who was or had been a clerk to a solicitor or that such other Order might be made as the Tribunal should think right. ^a

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 5th December 1995 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent did not appear and was not represented.

The allegation was that the respondent having been a clerk to a solicitor but not himself a solicitor had occasioned or been a party to with or without the connivance of the solicitor to

whom he was or had been a clerk acted or defaulted in relation to that solicitors practice which involved conduct on his part of such a nature that it would be undesirable for him to be employed by a solicitor in connection with his practice in that he misapplied funds belonging to clients of the firm which employed him.

The evidence before the Tribunal included a certificate of conviction.

At the conclusion of the hearing the Tribunal made the Order sought with effect from the 5th December 1995 and further Ordered the respondent to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,120.65.

The facts are set out in paragraphs 1 to 4 hereunder.

1. The respondent, who was not a solicitor, was between May 1992 and October 1993 employed as a conveyancing clerk by Messrs. Rigbeys solicitors of 42-44 Waterloo Street, Birmingham, B2 5QN. The respondent had also been employed by Messrs. Sidney Mitchell solicitors in their offices at Cotteridge, Birmingham.
2. On or about July 1994 Messrs. Rigbeys contacted the Solicitors Complaints Bureau (the Bureau) with regard to certain financial irregularities that had been discovered by the partners. In consequence an inspection of the firm's books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the Investigation Accountant's report dated the 5th September 1994 which revealed the misuse of clients' monies by the respondent in connection with clients Mr and Mrs P in respect of whom he had conduct of the conveyancing in connection with the sale of a property and the purchase of another. The respondent's employers had been unable to locate the file for either transaction but from the firm's word-processors they were able to obtain a copy of the completion statement provided to the clients by the respondent. The completion statement stated that a mortgage redemption of £33,097.53 had been paid to TSB Homeloans Ltd. However no payment to TSB Homeloans Ltd of that amount had been charged to client bank account or recorded in the relevant client ledger. The following bank account payments totalling £33,027.53 pence were however charged to the client ledger account of Mr and Mrs P:-

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
05.08.93	JMH	£6,800
27.08.93	JMH	<u>£26,227.53</u>
		<u>£33,027.53</u>

It was believed that JMH was the girlfriend of the respondent.

3. Mr and Mrs H's mortgage with TSB Homeloans Ltd was redeemed on the 29th September 1993 by the payment from client bank account of £32,749.16 which was charged to unrelated client ledger accounts, the sums charged respectively being £15,056 and £15,693.16.
4. On the 11th October 1993 the respondent by a payment, believed to be from his personal resources, of £15,773.85 made direct to Halifax Building Society to complete the purchase of a property by one of the clients unrelated to Mr and Mrs H whose

client ledger had been charged with part of their redemption monies. The remaining shortfall was rectified by the partners in Messrs. Rigbeys on the 26th May 1994. The partners had become aware of the existence of the client account shortage during May 1994 when a client (whose ledger had been improperly charged with a payment for Mr and Mrs H) queried why he had not received a refund of £17,056 which inadvertently had been paid to the firm twice. On the 8th March 1995 the Adjudication and Appeals Committee of the Solicitors Complaints Bureau resolved that application should be made to the Tribunal for an Order pursuant to Section 43(2) of the Solicitors Act 1974 in respect of the respondent.

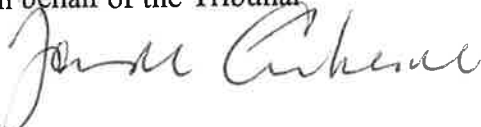
The Submissions of the Applicant

5. It was clear that the respondent had dishonestly mishandled clients' funds whilst in the employ of a firm of solicitors. The partners in the firm were not criticised.
6. The respondent had been convicted of two offences of theft and the police had indicated to the applicant that eight other matters had been taken into account. What the respondent had done represented a disgraceful course of conduct and upon his own confession he was convicted upon indictment of two counts of theft and had been sentenced to two years imprisonment in respect of each count to run concurrently.
7. The Tribunal was invited to consider the sentencing remarks of His Honour Judge Bray in the Crown Court at Birmingham when he said that the respondent had pleaded guilty to very serious fraud. He had been in a position of trust and gravely abused that trust.

The Tribunal FOUND the allegation to have been substantiated. The respondent's clear course of dishonest conduct was made even more serious by the fact that he had been employed in a position of trust. He had misused monies belonging to clients of the firm of solicitors by whom he had been employed. It was right that the respondent's future employment within the solicitors profession should be controlled by the Law Society and the Order sought was granted and it was also Ordered that the respondent pay the fixed costs and incidental to the application and enquiry. The respondent's behaviour had necessitated an inspection of his former employers' books of account by an Investigation Accountant of the Law Society and although it appeared that the only failure to comply with the Solicitors Accounts Rules related to the respondent's actions, the Tribunal was not minded to require the respondent to pay the costs of the Investigation Accountant.

DATED this 16th day of February 1996

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

Findings filed with the
Law Society on the 26th
day of February 1996

