

IN THE MATTER OF BARRY WORTHINGTON, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. Clitheroe (in the Chair)  
Mr. Chesterton  
Dame Simone Prendergast

Date Of Hearing: 30th January 1996

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## FINDINGS

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

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An application was made on behalf of the Law Society by Peter Harland Cadman solicitor of 2 Putney Hill, Putney, London SW15 6AB on the 20th November 1995 that an order be made by the Tribunal directing that as from a date to be specified in the order no solicitor should except with permission of the Law Society for such period and subject to such conditions as the Law Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Barry Worthington of Marple Bridge, Stockport a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974, or that such Order might be made as the Tribunal should think right.

The allegation was that the respondent had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his practice as a solicitor namely that he had:-

- a. failed to deal competently, thoroughly or at all with instructions received from a lay client;
- b. failed to register an enforceable charge on behalf of the Co-operative Bank Plc;

- c. in an attempt to hide his negligence he improperly backdated a transfer document and assent form 56;
- d. signed as witness to the signatures on documents even though he had not actually witnessed those signatures.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 30th January 1996 when Peter Harland Cadman solicitor and partner in the firm of Messrs Russell-Cooke, Potter & Chapman of 2 Putney Hill, Putney, London, SW15 6AB appeared for the applicant and Kevin Regan solicitor of 10 Dorset Street, Stratford M32 8HB appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent and his oral evidence and the oral evidence of John Nivison.

At the conclusion of the hearing the Tribunal made the order sought and ordered that the respondent pay the costs of and incidental to the application and enquiry fixed in the sum of £696.30p.

The Tribunal further ordered that the filing of the order with the Law Society be suspended until the day before the meeting of the appropriate Law Society Committee considering whether or not to consent to the continuing employment of the respondent by his current employer.

The facts are set out in paragraphs 1 to 8 hereunder:-

1. The respondent who was not a solicitor was employed as a conveyancing clerk by John Nivison & Co. solicitors of 251 London Road, Hazel Grove, Stockport. The respondent had been employed in that capacity by the firm and its predecessors since approximately 1975.
2. The facts were that the respondent had been instructed in a conveyancing transaction, by Mr C. He was to borrow money from Co-operative Bank Plc to be secured by first charge on three properties. One was the property at Levenshulme which had previously belonged to his parents.
3. His father had died and Mr C and Mr B were the executors of his will. In order to enable Mr C's interest in the property as beneficial owner to be registered at H M Land Registry it was necessary for the grant of probate, that an assent in favour of Mr C's mother and a deed of gift executed by Mr C's mother in favour of Mr C (dated 23rd February 1990) to be registered at H M Land Registry.
4. The respondent had conduct of the conveyancing transaction. He was aware that the deed of assent was not in his possession but had accepted the assurances of his client on a number of occasions that he held the relevant document with his papers and that he would hand it to the respondent, when, in fact, the document had not materialised. The respondent had believed that the document was in existence.

5. Unfortunately the respondent had passed the monies advanced by Co-operative Bank Plc to his client Mr C without ensuring that Mr C had executed the appropriate mortgage deed. That had been an oversight on the respondent's part. At the time he had believed he was holding an appropriately signed document.
6. He had notified his Principal of difficulty in the matter but believed he could protect the lender's position and put matters right. He had attempted to secure the lender's position by registering notice of deposit and in due course a caution at the Land Registry.
7. Because Mr C had not delivered the assent, the respondent had prepared a document of assent himself in Land Registry form 56. He had arranged for it to be dated on the 11th February 1990, in order that it predated the deed of gift (which was dated the 23rd February 1990). In February 1993 the Co-operative Bank's first legal charge was registered at H M Land Registry. An assent prepared by the respondent and the deed of gift were required to complete the title. The signatures on the assent and the deed of gift were witnessed by the respondent even though he had not seen the documents signed. He had believed his client, Mr C, when he told him that the signatures thereon were genuine. The respondent had dated the documents so as not to cause difficulty with registration at H M Land registry.
8. While that transaction was progressing, Mr C had negotiated a sale of the property to Mr N. That transaction was not registered at H M Land Registry because Mr C had told Mr N that the Land Certificate was missing. In due course a duplicate Land Certificate was requested from the Land Registry and upon that application being made the activities of the respondent had come to light.

#### **The submissions of the applicant**

9. It was no part of the applicant's case that the respondent had acted in the way that he did for any personal financial gain. When the respondent was arrested, he had not exercised his right to silence but had fully co-operated with the police explaining the situation in great detail.
10. There had been a loss to the Law Society's Compensation Fund of £36,688.00. The loss arose when payment was made to Mr N (the purchaser of the property at Levenshulme) there being two people claiming title to the property. That sum had enabled Mr N to acquire beneficial ownership.

#### **The submissions of the respondent**

11. The matter had caused considerable personal distress to the respondent and to his family. The respondent was not a dishonest man. He had worked as a conveyancing clerk over a long period of time and, indeed, had been known to his employer for some twenty years. He was an excellent and reliable employee.
12. He had made a genuine mistake in parting with advance monies from the Co-operative Bank to the borrower, also his client, without having the appropriate assent and deed of gift in his possession. He had genuinely believed that he had all documents to

complete the title. He had made a genuine error which he sought to rectify quickly. Mr C, also the respondent's client was not an honest man. At the time the respondent did not know that and had accepted his assurance's that the signed documents were in his possession and would shortly be delivered.

13. It was right that the respondent had not intended to nor had he made any personal gain. A simple mistake had led to the unfortunate state of affairs which had been placed before the Tribunal and a claim had been made on the Law Society's Compensation Fund.
14. Mr C was well aware of the fact that the Levenshulme property had problems because many letters had been written to him by the respondent setting out what was required to put things in order. Nevertheless Mr C negotiated the sale with Mr N.
15. At every juncture the respondent had been both frank and honest. He had not really considered that he had backdated documents, he had considered that he was preparing duplicates of those which his client had assured him were in existence.
16. Mr C had been respectably introduced to the respondent; he had always been polite and courteous and the respondent had no reason to suppose that he was a dishonest man.
17. The respondent had served the legal profession well for thirty three years. The Tribunal was invited to take note of the excellent testimonials offered in his support and the support given to the respondent by Mr Nivison, his employer. Mr Nivison was sure that the respondent had made one mistake which was wholly out of character and which in the normal circumstances would simply have been put right. It was the respondent's misfortune that he had made his mistake in a case in which it transpired that his client was a dishonest man.
18. Mr Nivison hoped to continue to employ the respondent and confirmed that he took appropriate steps to ensure that the respondent was supervised.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested. The Tribunal have noted the respondent's long service to the solicitors profession and have taken due note of the support offered to him in testimonials and indeed by his own employer to whom he has been well known for many years. The Tribunal accept that the respondent is a honest man who made an unfortunate mistake.

He made a second mistake in not making an entirely clean breast of what had happened to the Co-operative Bank and to his Principal. Again the Tribunal do not think that his failure to make a full and detailed disclosure of what had happened reflected upon the respondent's honesty but rather upon his genuine belief that he could put matters right.

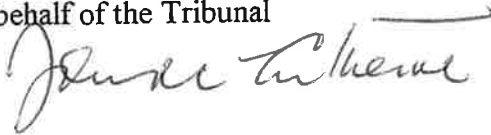
To a very large degree the respondent was the victim of a dishonest client, Mr C. The respondent had not only suffered the proceedings before the Tribunal but also had been arrested and interviewed by the police. The Tribunal was pleased to note that in the particular circumstances of this case the respondent was not prosecuted.

The Tribunal hopes that other conveyancers will take due notice of what happened in this case. It is all too easy for a busy conveyancing practitioner to complete standard forms of document to give effect to what appears to be a routine conveyancing transaction, and without giving due guard to the importance of the documents concerned.

In the circumstances the Tribunal considered it right that an order be made restricting the employment of the respondent within the solicitors' profession but expressed the hope that the Law Society will give favourable consideration to an application by Mr Nivison to continue to employ the respondent. In order to ensure that Mr Nivison is not deprived of his conveyancing clerk and to ensure that the respondent does not have to endure a period when he is not employed, the Tribunal ordered that the order should not be filed with the Law Society until the day before the meeting of the appropriate committee of the Law Society which will decide whether or not to approve the employment of the respondent by Mr Nivison. The Clerk to the Tribunal accordingly was instructed to deal with the matter accordingly and would rely upon the date of the beforementioned meeting being conveyed to her by Mr Nivison himself. It was right that the respondent should pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 22nd day of February 1996

on behalf of the Tribunal



J R C Clitheroe  
Chairman

Findings filed with the  
Law Society on the 30th  
day of July 1996