

IN THE MATTER OF MICHAEL COVENTRY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J.W. Roome (in the Chair)  
Mr. D.E. Fordham  
Lady Bonham Carter

Date Of Hearing: 25th April 1996

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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 Law Society by Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend-on-Sea, Essex on the 24th January 1996 that Michael Coventry solicitor of 56 Devonshire Road, Palmers Green, London, N13 5QX 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.

The allegations were that the respondent had:-

- (i) acted towards a client in circumstances where a conflict of interest might or did arise and failed to insist upon the clients obtaining independent advice in regard thereto;
- (ii) failed to honour the terms of undertakings giving by him to the said clients;
- (iii) failed to respond to correspondence and enquiry addressed to him by other solicitors and the Solicitors Complaints Bureau;
- (iv) by virtue of each and all of the aforementioned, has been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 25th April 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales & Janes of 16 Warrior Square, Southend-on-Sea, Essex appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the fact that service of the proceedings and all appropriate notices had been served in accordance with the Tribunal's Practice Rule No.1.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Michael Coventry of 56 Devonshire Road, Palmers Green, London, N13 5QX be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,105.64 inclusive.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent, aged 49, was admitted a solicitor in November 1970. At the material times he was in sole practice at 56 Devonshire Road, Palmers Green, London, N13. The Law Society intervened in his practice in February 1995.
2. The respondent acted on behalf of Mr. and Mrs. D. Those clients subsequently sought advice from Messrs. Lessers, solicitors of Manor Park, London who on the 1st June 1995 wrote to the Law Society enclosing correspondence sent to the respondent in relation to undertakings given to Mr. and Mrs. D.
3. The first undertaking had been given on the 15th March 1993 to Mr and Mrs D by the respondent to pay to them or the survivor of them the sum of £6,416.29 in or before the 15th March 1997 with interest at 15% per annum to be paid on the 31st March, 30th June, 30th September and 31st December in each year, the first of such payments to be made on the 30th June 1993.
4. The second undertaking was to Mr. and Mrs D by the respondent to pay £2,500 on or before the 12th May 1994 with interest at the rate of 15% per annum.
5. The third undertaking was to Mrs D to pay £6,000 on the 31st December 1994 or earlier with interest at 15% per annum. There was provision that in the event of her death prior to the 1st January 1995 the money would be paid to Mr. D.
6. The undertakings were given by the respondent in connection with loans made to him by Mr. and Mrs D.
7. On the 5th May 1995 Messrs. Lessers wrote to the respondent in connection with the total sum then due of £14,916.29. It was pointed out to the respondent that he was in breach of two of his undertakings as he had failed to make the promised capital payments. It was also pointed out that he had negotiated and received loans from clients at his request but had not at any time advised Mr and Mrs D to take independent advice on the nature of the transaction. No response was forthcoming and Messrs. Lessers wrote to the respondent again on the 16th May saying that if they

did not receive a detailed response within seven days the matter would be reported to the Law Society. No response was made.

8. On the 13th July 1995 the Solicitors Complaints Bureau (the Bureau) wrote to the respondent in relation to the complaint. The letter drew to the respondent's attention the breach of undertaking and also the question of conflict of interest. The respondent's explanation was sought. The respondent did not reply and a further letter was sent on the 10th August requiring response within seven days. No response was received. A letter was sent to the respondent by the Bureau on the 6th September indicating that the matter would be referred to a committee of the Bureau in connection with the respondent's conduct and allowing a further fourteen days for a response. No reply of any kind was received from the respondent and in due course a resolution was made to refer the respondent's conduct to the Tribunal. The respondent was so advised by letter of the 30th November 1995.
9. On the 25th August 1995 Messrs. Lessers wrote to the Bureau that they had obtained judgement against the respondent on behalf of Mrs D in the total sum of £10,181.24 plus fixed costs. The judgement was payable by the 18th August 1995.

#### **The Submissions of the Applicant**

10. The Tribunal was referred to Principle 15.05 in the sixth edition of the Law Society's Guide to the Professional Conduct of Solicitors. That principle was:-

"A solicitor must not act where his or her own interests conflict with the interests of a client or a potential client."

11. The commentary which follows that principle states:-

"Because of the fiduciary relationship which exists between solicitor and client a solicitor must not take advantage of the client nor act where there is a conflict of interest or potential conflict of interest between the client and the solicitor. In conduct there is a conflict of interest where a solicitor in his or her personal capacity sells to or purchases from or lends to or borrows from his or her own client. The solicitor should in these cases ensure that the client takes independent legal advice. If the client should refuse to do so the solicitor must not proceed with the transaction."

12. Not only had the respondent taken loans from clients without insisting that they take independent advice, a breach of the relevant principle, but he had acknowledged the loans by way of a solicitor's undertaking. His failure to pay the monies due to Mr. and Mrs D did therefore amount to a breach of undertaking.
13. Seven applications had been made to the Law Society's Compensation Fund out of which payment had been made at the time of the hearing of £8,711.37. There remained outstanding pending claims totalling £1,607.54. No recoveries had been made.
14. There were no submissions made on behalf of the respondent.

The Tribunal FOUND the allegations to have been substantiated.

On the 19th July 1995 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (i) dishonestly alternatively improperly utilised clients' money for his own purposes;
- (ii) acted in breach of the Solicitors accounts Rules 1986 and 1991 in that he drew from client account moneys other than permitted by Rules 7 and 8 of the said Rules and utilised the same for his own alternatively for the benefit of clients not entailed thereto;
- (iii) contrary to the provisions of section 34 of the Solicitors Act 1974 failed to deliver Accountant's Reports as by the said Rule required;
- (iv) by virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.

Although dishonesty had on that occasion been alleged against the respondent the Tribunal did not find that to have been substantiated. The report of the Investigation Accountant of the Law Society had been clarified by evidence that the shortages on client account were caused by non-delivery of bills of costs or written intimations thereof in circumstances where the client or beneficiaries concerned knew of and had not objected to the charges. The Tribunal considered that the respondent had been guilty of impropriety but not of dishonesty. The Tribunal imposed a fine of £500 and made a fixed order for costs to be taxed if not agreed.

It was a serious breach of the fiduciary relationship existing between a solicitor and his client if a solicitor sees fit to accept loans from a client without ensuring that that client has proper independent advice. The relevant principle is very clear. If the client refuses to take such advice then the solicitor must refuse to accept the loan. In this particular case the respondent gave undertakings to the client to repay of which he was in breach. The breach of a solicitors undertaking was a most serious matter and would seriously undermine the good reputation of the solicitors' profession. Claims had been made upon the Law Society's Compensation Fund. On the face of it it appeared that those claims had been made in respect of matters other than the undischarged loans made by Mr. and Mrs D. It was right that the respondent should be struck off the Roll of Solicitors and be ordered to pay the costs of the application and enquiry.

DATED this 7th day of June 1996

on behalf of the Tribunal



J.W. Roome  
Chairman

Findings filed with the  
Law Society on the 12<sup>th</sup>  
day of JUNE 1996