

IN THE MATTER OF ANDREW ATKIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. K I B Yeaman (in the Chair)

Mr. J R C Clitheroe

Mr. G Saunders

Date Of Hearing: 25th June 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 Solicitors Complaints Bureau by Peter Harland Cadman solicitor of 2 Putney Hill, Putney, London SW15 6AB on the 27th March 1996 that Andrew Atkin of Swinderby, Lincoln, might be required to answer the allegation set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation was that the respondent had been convicted of an offence of dishonesty in the course of his practice as a solicitor.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 16th June 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 the respondent did not appear and was not represented. The Tribunal had before it a letter addressed to its Clerk dated the 21st June 1996 from Messrs Mundy Coutts-Wood solicitors of Sheffield, South Yorkshire (here and afterwards referred to as the respondent's letter). The respondent's letter confirmed that the respondent would not appear at the hearing intending no discourtesy to the Tribunal.

The evidence before the Tribunal included the admission of the respondent contained in the respondent's letter.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Andrew Atkin of Swinderby, Lincoln a solicitor 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 £440.61p inclusive.

The facts are set out in paragraphs 1 and 2 hereunder:-

1. The respondent, born in 1954, was admitted as a solicitor in 1981. At the material times he carried on practice in partnership under the style of David Eyers with Ellis Green solicitors of Queen's Street, Sheffield.
2. On the 19th June 1995 the respondent appeared before Sheffield Crown Court and pleaded guilty of 14 offences of theft. The respondent was sentenced to a total of 21 months imprisonment.

#### **The submission of the applicant**

3. The respondent's former partners had noticed his odd behaviour and had referred the matter to the Solicitor's Complaints Bureau. The theft of which the respondent had been convicted related to money taken from the firm's client account. Some £24,000 had been taken and it was said that £16,000 had been taken by the respondent for his own benefit although it was accepted that the money had been taken to discharge certain debts and not for expenditure on a high life style. Nevertheless the respondent had taken clients' money and had been convicted of criminal offences involving dishonesty which amounted to serious professional misconduct, even having regard to the mitigation and the psychiatric report which had been placed before the Tribunal.

#### **The submissions of the respondent (contained in the respondent's letter.)**

4. The Tribunal was invited to appreciate that the matters which gave rise to the complaint against the respondent and the circumstances surrounding them had caused the respondent considerable anxiety resulting in a major depressive disorder.
5. At the time of his conviction and sentence there was before the Court a psychiatric report about the respondent. It was clear from the contents of the report that at the time of committing the offences the respondent was suffering a major depressive disorder and that the offences were in direct consequence of that disorder. That disorder brought about professional incompetence and the vast majority of the thefts were committed to hide that incompetence. The thefts involved the mishandling of clients' monies between themselves, and were not thefts perpetrated out of greed or avarice on the part of the respondent.
6. It had to be accepted that some £16,000.00 out of the total of £54,000.00 which had been misappropriated went to the respondent's benefit. It was accepted by the prosecution at the hearing in June 1995 that the money had not been taken by the

respondent to improve or enhance his lifestyle but rather to keep at bay professionally incurred debts which were in part responsible for his major depressive disorder and which resulted from a major financial catastrophe within his previous firm.

7. The Tribunal was invited to consider that the respondent had not acted in the way that he did as a greedy avaricious person who had fallen to temptation but rather as the breakdown of a good professional and family man who simply became unable to handle the considerable stresses which had built up within his professional life.
8. The psychiatric report also confirmed that the major depressive disorder suffered by the respondent continued after his apprehension and was followed by genuine suicide attempts as well as two disappearances.
9. Following his imprisonment, the respondent had been released on licence at the beginning of May 1996. He had returned to live with his wife and family and it was to be noted that his wife had provided him with considerable support during a very difficult period.
10. The respondent and his family were in straightened circumstances. It was unknown when the respondent might again be able to obtain remunerative employment. Neither the respondent nor his wife owned any assets of value.

The Tribunal FOUND the allegation to have been substantiated, indeed it was not contested.

On the 21st December 1993 the Tribunal Found the following allegations to have been substantiated against the respondent (together with two other respondents). The allegations were that the respondents had:

1. acted in breach of the provisions of the Solicitors Accounts Rules 1986 in that:
  - a) contrary to Rule 12 of the Rules books of account relating to the practice of the respondents at 84A Kensington High Street, London W8 were not produced to the Law Society's Investigation Accountant despite notice served in that regard;
  - b) contrary to the provisions of Rule 3 of the Solicitors Accounts Rules received money for and on behalf of clients which was not paid into the respondents' client account. Further or in the alternative, contrary to Rules 7 & 8 of the Solicitors Accounts Rules, drew from clients account money not permitted by the said Rules to be so drawn and utilised the same for their own or alternatively for the benefit of other clients not entitled thereto;
2. Contrary to the provisions of Practice Rule 7 of the Solicitor Practice Rules shared or agreed to share professional fees with a party other than one permitted by the provisions of the said Rule;
3. Contrary to the provisions of Practice Rule 13 of the Solicitors Practice Rules failed to ensure that the office at Kensington High Street was and could

reasonably be seen to be properly supervised in accordance with the minimum standards laid down by the said Rule;

4. failed to ensure that all partners held current Practising Certificates as required by Principle 2.08 of the Guide to the Professional Conduct of Solicitors alternatively failed to make adequate or proper enquiry as to the status of a person intended to be taken into partnership;
5. by virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

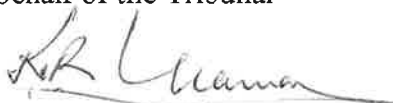
On that occasion the Tribunal took into account the fact that the real responsibility lay with one of the other respondents. It was accepted that the degree of responsibility of the respondent in this matter together with one other was considerably less than that of their partner. The Tribunal Ordered that this respondent be reprimanded and Ordered him to pay a proportion of the costs (the whole being £2,044.12p) amounting to £522.06p.

The Tribunal accept that the earlier Findings & Order against the respondent have little or no bearing on the matters before them in June 1996.

It was clear that the respondent's mental health was not good at the time when he committed the criminal offences in respect of which he had been convicted and had served part of a custodial sentence. The Tribunal accepted that the monies which the respondent had stolen had not been employed in frivolous high living, however the respondent had been guilty of a theft of clients' funds and there was no suggestion that his mental condition could have rendered him incapable of committing theft. There was no doubt that such behaviour on the part of a solicitor seriously undermined the good reputation of the solicitors' profession and it was right that the respondent should not be permitted to continue in practice as a solicitor. The Tribunal Ordered that the respondent be Struck Off the Roll of solicitors and they further Ordered that he pay costs in a fixed sum, however in view of the respondent's parlous financial state the Tribunal asked the Law Society to exercise its discretion in the pursuit of such costs from the respondent.

DATED this 18th day of July 1996

on behalf of the Tribunal



K I B Yeaman  
Chairman

Findings filed with the  
Law Society on the 22nd  
day of July 1996