No. 7100/1996

IN THE MATTER OF JOHN PETER MANSFIELD, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mr. D.W. Faull
Dame Simone Prendergast

Date Of Hearing: 13th June 1996

FINDINGS

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

An application was duly made on behalf of the Law Society by David Rowland Swift solicitor of 19 Hamilton Square, Birkenhead on the 30th March 1996 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 the permission of the Law Society for such a 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 of a solicitor John Peter Mansfield of
Street, Neots, Cambridge 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 convicted of criminal offences which disclosed such dishonesty 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.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 13th June 1996 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 did not appear and was not represented. The Tribunal had, however, received a letter from the respondent received by fax on the 11th June 1996 in which the respondent requested an adjournment. That letter is referred to in greater detail hereunder.

The Tribunal dealt first with the written application for an adjournment.

The Submissions of the Respondent (contained in his letter of the 11th June 1996)

The effect of an order made pursuant to Section 43 of the Solicitors Act 1974 would have grave consequences for the respondent and his family as he believed he would not be able to obtain employment within the law where his experience lay.

If the Tribunal refused to adjourn the matter then he would be prevented from presenting the full facts to the Tribunal not only pertaining to the criminal offence but also to his medical and mental condition at that time.

It was a year since the convictions and almost three years since the complaint was made and six years since the offences were committed. A request for a little more time before the hearing was not unreasonable.

The respondent had instructed a solicitor to represent him hitherto and understood that solicitor had indicated that he would not require strict proof of attendence or the attendance of any witnesses. The respondent indicated that his solicitor had taken that step without his instructions. He had asked the solicitors formally representing him to remove themselves from the record and confirmed that he did require strict proof of the convictions and all of the surrounding circumstances which led to his guilty plea. To proceed on any other basis would give a distorted view. Unless all the full facts were known then a just decision was not possible.

In addition the respondent wished to present detailed medical evidence and neither of his doctors were able to attend the Tribunal on the 13th June 1996.

The respondent wished to have an opportunity to respond to a letter addressed to the Tribunal by a firm of solicitors which he considered to be misleading. He had seen the document a little over a fortnight before writing the letter. He said it contained falsehood, slanders and innuendo which needed correcting.

The respondent submitted that the mere commission of the offences was insufficient to enable the Tribunal to make an order. His submission was that there would be a breach of natural justice if the Tribunal were to proceed to a full hearing and to try to deal with the respondent's case in isolation on a bare certificate of conviction.

The respondent wished, for example, to raise questions with the officer dealing with the case and who was not interviewed.

A conflict of interest had arisen with his former solicitors and the respondent wished to instruct another firm.

The respondent requested an adjournment of one month.

The Submissions of the Applicant

The respondent had been convicted of a criminal offence involving dishonesty. He had been convicted following his own plea of guilty. The guilty plea and the convictions were prima facie evidence before the Tribunal as provided by the Solicitors (Disciplinary Proceedings) Rules 1994 - Rule 30(1)(a) and the findings of the Learned Judge contained in the transcript of his sentencing remarks were admissible pursuant to Rule 32 of the Solicitors (Disciplinary Proceedings) Rule 1994.

The proceedings had been served upon the respondent on the 3rd April 1996. A bundle of documents had been served with appropriate notices on the 20th May 1996. A copy transcript and notice to admit had been served upon the respondent on the 4th June 1996. No counter notices had been received by the respondent. The time for service of the counter notices had expired.

In the submission of the applicant it was appropriate that the matter should proceed to a final conclusion.

The Chairman raised the issue that, as the respondent's prison sentence had been suspended the Learned Judge must at the criminal trial have found that there were exceptional circumstances. It was pointed out that if these allegations were substantiated against a respondent solicitor, the Tribunal would have been able to impose one of a variety of sanctions, and their final decision might have been swayed if the solicitor respondent had been present to present formal mitigation, whereas in the case of a solicitor's clerk the Tribunal's choice was either to make an order or not to make an order pursuant to Section 43. The applicant submitted that if the respondent's conviction were satisfactorily proved, the Tribunal would have no option other than to make the order. The choice apparently would be for the Tribunal to make the order sought or to adjourn. The applicant said that it was accepted that a judge might only suspend a custodial sentence if he found exceptional circumstances. There were, however, very few occasions when a judge's discretion in that matter had been the subject of consideration by a higher court. Naturally defendants did not usually appeal against suspended sentences.

The applicant believed that the exceptional circumstances related to the state of the respondent's health. In a normal criminal situation a defendant's medical condition did not affect whether or not he had been found to have been dishonest. The Learned Judge in sentencing commented that at the time when the respondent had been dishonest his medical condition might have had an effect upon his judgement.

The respondent did however admit dishonesty in the criminal trial and the fact was that he had been dishonest.

If, indeed, the respondent's medical condition had played a part in his commission of a dishonest act, then perhaps he was a person who should very properly be the subject of an order made pursuant to Section 43 of the Solicitors Act 1974 which meant, of course, that he could not be employed within the solicitors' profession without the consent of the Law Society first obtained.

After considering the matter, the Tribunal did not consider that the respondent would be prejudiced if the matter were to proceed. Indeed the Tribunal would have been failing in its duty if it did not make the order sought, provided that the allegation had been substantiated, both to the public and to the solicitors' profession. In the circumstances outlined, it was right that the Law Society should have control over whether or not a solicitor employed a person who had been convicted of criminal offences involving dishonesty.

The evidence before the Tribunal included a certificate of conviction and a transcript of the sentencing remarks of His Honour Judge Marshall in the Crown Court at Luton.

At the conclusion of the hearing the Tribunal ORDERED that as from the 13th June 1996 no solicitor should except in accordance with permission in writing granted by the Law Society for such a 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 of a solicitor John Peter Mansfield of St. Neots, Cambridge a person who was or had been a clerk to a solicitor and the Tribunal further ordered that he pay the costs of and incidental to the application and enquiry fixed in the sum of £564.62.

The facts are set out in paragraphs 1 to 5 hereunder.

1. The respondent, who was not a solicitor, was employed as a litigation clerk by Messrs. Charles Smith & Co. solicitors of 2/4 High Street, Hitchen, Hertfordshire.

2. The respondent had been employed in that capacity by the firm for a number of years prior to his resignation from his employment with the firm in January 1991.

3. On the 14th July 1995 the respondent appeared before the Crown Court sitting at Luton and was convicted of an offence of procuring the execution of a valuable security by deception and two offences of making false instruments. The respondent was sentenced to a period of nine months imprisonment suspended for a period of two years and ordered to pay costs of £330.

4. The respondent's offences had occurred in connection with his own purchase of a property with the assistance of a mortgage advance. He obtained a valuation of the property at £90,000. He supported his mortgage application with a forged valuation report that the property was worth £145,000 and obtained a non-status mortgage of £90,000. The respondent handled the conveyancing himself, mainly from home as he was off work owing to illness. The respondent's employer firm held a mortgage file and they dealt with the matter as if the purchase price were £145,000.

5. The seller's solicitors dealt with the sale at the price of £90,000 throughout. The respondent attended to the completion personally, collected the deeds on the sale at £90,000 and delivered them to his employers acting for the mortgagees in a form supporting the purchase at £145,000. The mortgagee had repossessed the property, and had sold it at a loss.

The Submissions of the Applicant

6. The respondent had been convicted of criminal offences involving dishonesty. He had committed what had come to be known as "mortgage fraud" and had committed those offences in connection with and during the course of his employment with a firm of solicitors as a clerk.

7. The Tribunal was referred to the sentencing remarks of His Honour Judge Marshall in particular where he said "there is no doubt that you committed a deception that enabled you to purchase a house. This deception required you firstly to forge a report written by a professional man who was deceived. It required you to make a false instrument by forgery to deceive your employers, the vendors and the mortgage company in order that you could obtain the money by fraud.

It was a complicated matter in that you had to set out for the mortgage company a false price, a false valuation and required you to cover that up by forgery. You were able to do this because you were a solicitor's clerk in a position of trust. There is no doubt in my mind that you are in breach of that trust. This is a serious offence. It is an offence for which only custody is a justifiable penalty."

The Submissions of the Respondent

8. The submissions of the respondent contained in his aforementioned letter of the 11th June 1996 have been set out in connection with his application for an adjournment. The Tribunal had been supplied by the respondent's former solicitors with medical reports prepared in the summer of 1995 in respect of the respondent. The Tribunal had taken these into account.

The Tribunal FOUND the allegation to have been substantiated. The respondent had been convicted of serious criminal offences upon his own guilty plea. It was right that his future employment within the solicitors' profession should be controlled. The Tribunal made the order sought and ordered the respondent to pay fixed costs.

DATED this 9th day of July 1996

on behalf of the Tribunal

J.R.C. Clitheroe
Chairman