

IN THE MATTER OF PETER JOHN SALE, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D W Faull (in the Chair)  
Mr. D J Leverton  
Mr. R P L McMurtrie

Date Of Hearing: 30th 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 Solicitors Complaints Bureau by Gerald Malcolm Lynch, solicitor of 16 Warrior Square, Southend-on-Sea, Essex on the 1st April 1996 that Peter John Sale a solicitor whose address is care of Messrs Barnes Harrild & Dyer of 76 London Road, Croydon, Surrey might be required to answer the allegations contained 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 in breach of Practice Rule 1 of the Rules of Professional Conduct in that he failed to act in the best interests of his client and in particular:-
  - (a) he had dishonestly, or alternatively, improperly utilised clients' money for his own benefit;
  - (b) had acted in breach of his fiduciary relationship to his client in the raising of bills in respect of work not done, or alternatively raising bills which constituted an improper overcharge for work alleged to have been done;
  - (c) had failed to account in respect of clients' money received.

- (ii) acted in breach of the Solicitors Accounts Rules 1991 in the following particulars:-
- (a) failed to pay into clients account clients' money received and as required by Rule 3;
  - (b) drawn from client account clients' money other than in accordance with the principles of Rules 7 and 8 and utilised the same for his own benefit alternatively for the benefit of other clients not entitled thereto;
  - (c) in breach of Rule 11 failed to keep his books of account properly written up as by the said Rule required and/or caused false entries to be made in the said books of account.
- (iii) By 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 30th April 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales & Janes, 16 Warrior Square, Southend-on-Sea, Essex appeared for the applicant and Barry K Barnes solicitor and partner in the firm of Messrs. Barnes, Harold & Dyer of 76 London Road, Croydon, Surrey appeared for the respondent.

The respondent had not received the period of notice of the proceedings required by the Solicitors Disciplinary Proceedings Rules 1994. The Tribunal had agreed to attenuate the period of notice with the consent of the applicant at the request of the respondent as it was considered that his mental condition was such that the disposal of the proceedings as expeditiously as possible would ameliorate the detrimental affect that the proceedings might have had upon his psychological position.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Peter John Sale of c/o Messrs Barnes Harrild & Dyer of 76 London Road, Croydon, Surrey 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 £3,377.19 inclusive.

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

1. The respondent, aged forty one years, was admitted a solicitor in 1979. At the material times he was a partner in the firm of McMillan Williams carrying on business at a number of offices in Surrey and London and in particular at 9 Beddington Gardens, Wallington where the respondent was in charge. The name of the firm at that address being Messrs Odhams in association with McMillan Williams. The respondent ceased to be a partner in the firm of the 1st March 1994.
2. Following notice duly given the Investigation Accountant of the Law Society inspected the books of account of the firm of McMillan Williams commencing on the 11th December 1995. A copy of the Investigation Accountant's Report dated the 7th February 1996 was before the Tribunal. The Investigation Accountant's Report revealed that the respondent had been interviewed and admitted misuse of clients' funds for his personal benefit.

3. The books of account were not in compliance with the Solicitors Accounts Rules as they contained false entries made at the instigation of the respondent.
4. At the 30th November 1995 there was a minimum shortage on clients account in the sum of £24,549.48. The shortage was rectified during the inspection by transfers from office to client bank account.
5. The minimum cash shortage was caused by the use by the respondent for his personal benefit of the sum of £15,274.48p and the use for the benefit of other clients not entitled thereto of the sum of £8,525.00.
6. The respondent had received the sum of £750.00 as an ex gratia payment in an estate which had not been paid into the client's account.
7. Clients had been over-billed in a minimum sum of £14,147.85 in respect of the affairs of two estates .
8. The respondent admitted to the raising of one bill which was not valid.

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

9. The allegations were admitted and were, of course, supported by the facts set out in the Investigation Accountant's Report. The applicant had framed the allegations so that dishonesty or alternatively impropriety was alleged, however he did put the case as one of dishonesty. That was a matter for the Tribunal to decide.

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

10. The Tribunal had received a psychiatric report on the respondent dated the 26th April 1996. The respondent had first been treated by Sutton Psychiatric Services after referral in 1993. Depressive symptoms had been present for four and a half years duration prior to treatment. The respondent had suffered from alcohol dependence which had been recognised and resolved with treatment.
11. The respondent had undergone treatment directed at symptoms of anxiety and depression including particularly profound suicidal thoughts and actions.
12. The respondent had been admitted as a solicitor in April 1979 and until 1991 there had been no suggestion of impropriety. Matters had come to a head with a breakdown in the respondent's health.
13. The respondent having been an assistant solicitor with another firm took over the practice of Mr Odhams who had retired and thereafter the respondent practised on his own account. He had approached Mr McMillan who maintained a branch office near that of Mr Odhams to make an informal arrangement to look after each others work and share costs. Subsequently a partnership was agreed. As a result of the entry into partnership the respondent was constantly urged to increase the income of his office. His monthly costs figures were considered and castigated as they were not up to scratch. The respondent had taken the step of inflating bills to make his costs look better. When they were not paid that did not look good. It was then that he began to make transfers from unconnected client account ledgers.

14. The respondent had used £15,000.00 of clients' money to settle a personal tax liability. He did not have ready funds available. He should have approached his bank manager for a loan but his mental health was such that he was not able to think straight.
15. The respondent had been interviewed for some three hours by the Investigation Accountant at the office of his representative. He had done the best that he could to explain the position.
16. The respondent had withdrawn by cheque £15,000.00 from a building society account but had not used it immediately. The cheque sat on his desk for two or three days. To behave in that way was alien to the respondent in view of his religious upbringing.
17. It was then that he made his first attempt at suicide. Afterwards he sent off the cheque. However when he was questioned about his actions he was open and frank and readily accepted that what he had done was wrong.
18. Shortly after that the respondent's mental health failed very badly indeed and he walked out of his office and had not gone back.
19. The respondent deeply regretted the situation. At the time of the hearing his only source of income was sickness benefit. He continued to receive psychiatric treatment.

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. Clearly this is a very sad case. The respondent's mental health had broken down. The respondent had, however, previously stated that he knew that what he had done was wrong and despite the very strong mitigation of the respondent's psychiatric condition the Tribunal found that the respondent had acted dishonestly. The Tribunal pointed out to the respondent that acting as a solicitor could be in itself stressful and he appeared not to be mentally equipped to deal with that stress. The Tribunal ordered that the respondent be Struck Off the Roll and further ordered that he pay the costs in an agreed fixed sum which included the costs of the Investigation Accountant of the Solicitors Complaints Bureau. The Tribunal trust that the respondent will continue with his psychiatric treatment and that it will successfully resolve his difficulties and enable him to pick up the threads of his life following another career path.

DATED this 18th day of June 1996

on behalf of the Tribunal

  
D W Faull  
Chairman

Findings filed with the  
Law Society on the 1st  
day of July 1996