

IN THE MATTER OF LESLIE ROBERT BURKE AND RESPONDENT 2 solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D.W. Faull (in the Chair)  
Mr. K.I.B. Yeaman  
Mr. Dame Simone Prendergast

Date Of Hearing: 23rd July 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 of 16 Warrior Square, Southend on Sea, Essex on the 26th April 1996 that Leslie Robert Burke and RESPONDENT 2 solicitors of L.R. Burke and Company, 34B High Street, Northwood, Middlesex 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:

### **In respect of Leslie Robert Burke**

- (i) He had been guilty of conduct unbecoming a solicitor in that on the 2nd December 1994 at Snaresbrook Crown Court, he was convicted upon indictment of attempting to obtain property by deception and sentenced to a term of imprisonment and which conviction was upheld on appeal;
- (ii) Had dishonestly, alternatively improperly utilised clients' money for his own purposes;

- (iii) Had acted in breach of the provisions of the Solicitors Accounts Rules in the following particulars:-
- (a) In breach of Rule 11 failed to maintain a clients' ledger;
  - (b) In breach of Rules 7 and 8 drew from client account moneys other than permitted by the said Rules so be drawn and utilised the same for his own benefit alternatively for the benefit of other clients not entitled thereto;
  - (c) By virtue of each of the aforementioned been guilty of conduct unbecoming a solicitor.

**In respect of RESPONDENT 2**

The allegations were that she had acted in breach of the provisions of the Solicitor Accounts Rules 1991 in the following particulars, namely that she had:-

- (a) Contrary to the provisions of Rule 11 failed to maintain a clients' ledger;
- (b) Contrary to the provisions of Rules 7 and 8 drew from client account moneys other than in accordance with the provisions of the said Rules and utilised the same for her own benefit alternatively for the benefit of other clients not entitled thereto;
- (c) By virtue of the aforementioned been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 23rd July 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales and Janes of 16 Warrior Square, Southend on Sea, Essex appeared for the applicant and the respondents

The evidence before the Tribunal included the admissions of Mr. Burke as to allegations (i), (iii)(a) and (iii)(b) save that the respondent did not admit that he had used clients' money for his own benefit. He denied allegations (ii) and (iii)(c).

RESPONDENT 2 admitted allegations (a) and (b), but denied allegation (c) (that she had been guilty of conduct unbecoming a solicitor).

At the conclusion of the hearing having found all of the allegations against Mr. Burke to have been substantiated and allegation (a) and (b) against RESPONDENT 2 to have been substantiated the Tribunal made the following Orders.

The Tribunal Ordered that the respondent Leslie Robert Burke of L.R. Burke & Co., 34B High Street, Northwood, Middlesex, HA6 1BN 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 £3,171.24 inclusive.

The Tribunal agreed that the filing of the Striking Off Order with the Law Society might be suspended for the period of 14 days to enable to Mr. Burke to consider his position with

regard to an appeal and further to enable him to arrange for his practice to be passed to other solicitors and conclude an arrangement made by him prior to the hearing in that respect.

The Tribunal ORDERED that the respondent 2, \_\_\_\_\_ of L.R. Burke & Co., 34B High Street, Northwood, Middlesex, HA6 1BN solicitor to pay a fine of £250 such penalty to be forfeit to Her Majesty the Queen.

The facts are set out in paragraphs 1 to 7 hereunder.

1. Mr. Burke, 52 years of age, was admitted a solicitor in 1967. RESPONDENT 2 28 years of age, as admitted a solicitor in 1993. At all material times, the respondents practised in partnership as L.R. Burke & Co., at 34B High Street, Northwood, Middlesex. Mr. Burke also practised in partnership under the style of Burkes Law Practice at The Old Chapel, 154 High Street, Yewsey, Middlesex although the allegations do not relate to that practice. RESPONDENT 2 became a salaried partner in the practice on the 1st November 1993.
2. On the 2nd December 1994 the respondent as convicted in the Snaresbrook Crown Court of attempting to obtain property by deception. The conviction related to the period January 1991 to March 1992 when Barclays Bank Plc was the subject of a concerted attack by persons to defraud the Bank by way of using counterfeit cheques. The counterfeit cheques were paid into accounts and if the cheque cleared, the funds were drawn out in cash. Mr. Burke paid a counterfeit cheque for £235,000 into his clients account and sought to draw £190,000 against it. The cheque paid in was discovered to be counterfeit and not honoured. Mr. Burke stated that he had received this cheque from a client in relation to a house purchase.
3. There was an appeal by Mr. Burke against the conviction which was heard by the Court of Appeal between the 9th and 12th October 1995. The appeal against the conviction was dismissed but the appeal against sentence was allowed in the sense that a suspended sentence was imposed in lieu of actual imprisonment. There was an indication that this was done as a result of Mr. Burke's deteriorating health.
4. The Investigation Accountant of the Law Society inspected the books of account of the respondents at 34B High Street, Northwood starting on the 1st May 1995 and reporting on the 8th June 1995. A copy of the report was before the Tribunal and revealed the following matters.
5. No clients' ledger had been maintained in respect of the practice since 1987. Because of this the Investigation Accountant could not prepare figures, but a minimum liability of £5907.80 was established in respect of five clients. A comparison of that figure with cash held on client bank account revealed a minimum cash shortage of £3447.25. The shortage had been rectified.
6. The shortage had been caused by personal transfers from client bank account of £985 and an unallocated transfer from client to office account in anticipation of costs.

7. The breaches of the Solicitors Accounts Rules were taken up with the respondent by the Solicitors Complaints Bureau (the Bureau) and an extensive correspondence ensued.

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

8. The allegations were put against RESPONDENT2 on the basis that she was a salaried partner and as such was responsible for the full observation of the provisions of the Solicitors Accounts Rules. She could not escape that responsibility by indicating that she had taken no part in the keeping or preparation of accounts. In the submission of the applicant it was for the Tribunal to apportion responsibility in that regard.
9. Mr. Burke had been convicted of a criminal offence involving dishonesty. His conviction had been upheld by the Court of Appeal. It was accepted that his sentence had been adjusted to a suspended one, but such adjustment really was not relevant to the allegations before the Tribunal, but nevertheless his conviction for dishonesty still stood.
10. The respondent accepted that he had purchased a book and had paid office rent out of client account. In the submission of the applicant that was a clear utilisation of clients' monies for the respondent's own benefit.

### **The Submissions made on behalf of Mr. Burke**

11. The first allegation was admitted and it was accepted that the Tribunal's customary policy was not to go behind a conviction. The respondent accepted the inevitability of a striking off order being made in respect of him and invited the Tribunal to recommend that the respondent be employed as a clerk by a solicitor in the position where he would have no unsupervised dealings with clients' money.
12. The criminal conviction followed the receipt by the respondent of instructions by a Mr. C to hold monies in client account with a view to the purchase of a property at Hampstead. Subsequently Mr. C was discovered to be a fraudster but at the time of the initial instructions this was not known to Mr. Burke. Mr. C gave the cheque to Mr. Burke who paid it into his client account. The cheque was counterfeit but it was not obviously a forgery. The Securities Director of Barclays Bank Plc admitted that the Bank's own machinery did not detect that the cheque was counterfeit. Mr. C subsequently notified the respondent that he had changed his mind and did not want to buy the property. He asked for the return of his money in cash or by bankers draft. The respondent at that stage should have been suspicious. His suspicions had not previously been aroused, indeed he opened a prospective purchase file. The Tribunal was invited to give due weight to the unfortunate psychological condition of the respondent at the time when these matters occurred. The respondent was described at that time as being a recovering alcoholic. In fact no money was paid over as the police had become involved.
13. With regard to the allegations arising from breaches of the Solicitors Accounts Rules, the respondent worked from home and kept his ledgers at home. He alone was

responsible for the shortfalls. It was accepted that the respondent had failed to maintain a client ledger account.

14. With regard to the personal payments made from client account, the respondent had in error used the client account cheque book to pay office rent and to pay for the purchase of a book. The respondent's approach had been sloppy but not dishonest. No client had suffered any loss and no claim had been made upon the Law Society's Compensation Fund. The shortfall had been made good. Again it was perhaps the respondent's psychological state which led to his use of the wrong cheque book.
15. The respondent had, until his conviction and the discovery of discrepancies in connection with his book keeping, practised within the solicitors' profession without blemish since 1967. He had always been trustworthy and had been a trusted employee or a sole practitioner for many years.
16. The Tribunal had before it a psychiatric report prepared by the United Kingdom's leading expert on alcohol induced problems. Mr. Burke had been a serious alcoholic in the 1980's and when the alleged offence occurred he had just stopped drinking. That was the most difficult period for an alcoholic who was unable to get through the day without resorting to drinking alcohol. The respondent had on occasion suffered from delirium tremens and epileptic fits.
17. The respondent had put in a great deal of voluntary work to assist the Lawyers Alcoholic Group and the organisation Alcoholics Anonymous. He had also undertaken work in support of his local branch of the Royal Society for the Prevention of Cruelty to Animals.
18. In addition to the problems induced by alcoholism Mr. Burke had at the time of his conviction been diagnosed as suffering from cancer which at the time was thought to be terminal. The respondent was at the time of the hearing in remission.
19. The respondent accepted full responsibility for the accounting breaches. **RESPONDENT 2** was not culpable. The respondent accepted that he should be ordered to pay the whole of the costs of the application and enquiry and that no costs burden should fall on **RESPONDENT 2**.

### **The Submissions of **RESPONDENT 2****

20. **RESPONDENT 2** accepted that as a salaried partner she bore a responsibility for compliance with the Solicitors Accounts Rules.
21. After leaving school **RESPONDENT 2** attended Leicester University and then attended the College of Law. She passed her solicitors final examinations in 1991 at the age of 23 and then began to serve articles in September 1991 with Mr. Burke.
22. **RESPONDENT 2** had been given detailed instructions about the accounts. She had been told that a qualified accountant had been employed to prepare the books and ledgers. She had no reason to suspect that the accountant was anything other than

conscientious and respectable and she had never doubted that he would act in a professional way.

23. Similarly Mr. Burke had never given her any reason to doubt his professionalism. Mr. Burke had been arrested in the spring of 1992. He had assured **RESPONDENT 2** that he was not guilty of any offence and she had accepted his word.
24. **RESPONDENT 2** completed her articles in late 1993 and was offered a salaried partnership in November. Initially she refused saying that she did not feel she was ready to accept the responsibility. Mr. Burke had assured her there was no reason for concern and that he had been in practice for many years. There were no real debts. He also told her that unless she became a partner she would be unable to take "a percentage" on the files handled by her. At that date she was 25 years of age. She was aware of her responsibility in respect of the accounts. However she had complete faith in Mr. Burke and the accountant. She had no recollection of thinking that she ought to inspect the accounts but thought with the benefit of hindsight that she would have found such a demand rather difficult at her age and seniority.
25. **RESPONDENT 2** had been a salaried partner for about 7 months when she left on maternity leave in June 1994. She returned to work part time in February 1995.
26. By that stage Mr. Burke had been released on bail and was seriously ill suffering from throat cancer. It was feared that he was likely to die.
27. The accounting system remained the same. **RESPONDENT 2** had not been given access to the cheque books and she was not entitled to sign cheques.
28. **RESPONDENT 2** had done all that she could conscientiously believed to have been necessary to comply with the Solicitors Accounts Rules.
29. **RESPONDENT 2** future was uncertain. She anticipated having to work full time as a solicitor, possibly with the firm that was to take over Mr. Burke's practice. She was hoping to raise monies to convert her home to accommodate her disabled father in law. Her future depended to a large extent upon the outcome of the disciplinary proceedings.

The Tribunal FOUND the allegations to have been substantiated in respect of Mr. Burke, including the allegations of dishonesty and utilisation of clients' funds for his own benefit. There was no doubt that Mr. Burke's behaviour amounted to conduct unbecoming a solicitor.

In the case of **RESPONDENT 2** the Tribunal FOUND allegations (a) and (b) against her to have been substantiated, indeed she accepted that she could not avoid responsibility in her position as a salaried partner. In the particular circumstances of this case the Tribunal has not found allegation (c), (that she had been guilty of conduct unbecoming a solicitor) to have been substantiated.

In respect of Mr. Burke the Tribunal accept that he had been a conscientious and competent solicitor for many years. They have sympathy for the fact that he had for

some time been an alcoholic and gave him credit for the fact that he had overcome his alcoholism and had worked strenuously to assist others who were similarly afflicted. The Tribunal accepts how difficult it is for a reformed alcoholic to maintain his equilibrium and have to give Mr. Burke credit for the fact that he has displayed considerable strength in coping with his arrest and conviction and being diagnosed as suffering from a terminal illness. Whilst the Tribunal accepts that the allegations concerning breaches of the Solicitors Accounts Rules cannot be said to be at the highest end of the scale and that there has been no loss to clients, the Tribunal has found the allegation of dishonesty to have been proved against the respondent. They accept however that the respondent had not been guilty of deliberately taking clients' money but rather that his apparent and admitted utilisation of an incorrect cheque book from time to time had not been regarded by him as a serious matter and, indeed, it had been said that he had deliberately used the wrong cheque book upon finding that he had on occasion taken a wrong cheque book. Mr. Burke could not avoid the allegation that he had utilised clients' funds for his own purposes when in fact he had written client account cheques to pay rent and to buy a book.

Solicitors are well aware of their vulnerability and their duties in respect of attempts by third parties at money laundering. The respondent could not avoid the fact that he had been convicted of a serious criminal offence involving deception and in particular the fact that the conviction had been upheld by the Court of Appeal. It was right that the respondent should be struck off the Roll of Solicitors. He accepted that he solely should be responsible for the costs of and incidental to the application and enquiry. The Tribunal Ordered that he should, therefore, pay the whole of the costs in an agreed fixed sum.

RESPONDENT 2 had been a young and inexperienced solicitor when entering salaried partnership with the respondent and there was no doubt that she had been naive and unwise. She had however admitted that she was entirely aware of her responsibility for the proper keeping of accounts and despite being so aware had taken no steps at all to ensure that everything had been in order. Although the Tribunal placed her culpability at the lowest possible level she was, as she herself recognised, responsible in her position as a partner. The Tribunal considered it appropriate to impose a small fine upon her in view of her admitted responsibility fixed at a level to display that she herself played no part in creating the accounting deficiencies, that being further reflected in the fact that no order for costs has been made against her and the Tribunal has not found her to have been guilty of conduct unbecoming a solicitor.

DATED this 19th day of August 1996

on behalf of the Tribunal

  
D.W. Faull  
Chairman

Findings filed with the  
Law Society on the 19th  
day of February 1997