

IN THE MATTER OF JOHN HYND ALEXANDER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J W Roome (in the Chair)
Mr. A H Isaacs
Mrs. C Pickering

Date Of Hearing: 9th January 1997

FINDINGS

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

An application was duly made on behalf of the Solicitors Complaints Bureau (superseded by the Office for the Supervision of Solicitors) by Andrew Christopher Graham Hopper solicitor of PO Box 7, Pontyclun, Mid Glamorgan on the 24th June 1996 that Andrew John Hynd Alexander of Tring House, High Street, Cranleigh, Surrey, GU6 8RL (whose address was subsequently notified to be Cranleigh, 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) failed to comply with the Solicitors Accounts Rules 1991 in that he drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;
- (ii) had been guilty of conduct unbecoming a solicitor in that he misused clients' funds for his own purposes.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 9th January 1997 when Andrew Christopher Graham Hopper, solicitor, of PO Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the acceptance by the respondent of the facts.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Andrew John Hynd Alexander of Cranleigh, Surrey (formerly of Tring House, High Street, Cranleigh, 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 £5,721.09 inclusive.

The facts are set out in paragraphs 1 to 42 hereunder.

1. The respondent, born in 1945, was admitted a solicitor in 1971. At the material times he practised on his own account under the style of A. Alexander & Co. at Tring House, High Street, Cranleigh, Surrey.
2. Upon due notice an investigation of the respondent's books of account was undertaken by an Investigation Accountant of the Solicitors Complaints Bureau (the Bureau). The inspection began at the respondent's offices on the 7th May 1996 and the Investigation Accountant's report dated the 30th May 1996 was before the Tribunal.
3. The report revealed that the respondent's books of account did not comply with the Solicitors Accounts Rules 1991.
4. A list of liabilities to clients as at the 30th April 1996 was produced for inspection. The list was in agreement with the balances shown in the clients' ledger totalling £94,840.01 but it did not include further minimum liabilities of £42,762.10 in respect of clients' funds improperly transferred to office bank account and funds incorrectly held in office account. A comparison of the total liabilities to clients with cash held on client bank account, after allowance for uncleared items, revealed the following position:

Liabilities to clients per the books	£94,840.01
Minimum liabilities to clients not shown by the books	<u>42,762.10</u>
Minimum total liabilities to clients	137,602.11
Cash available	<u>87,411.04</u>
Minimum cash shortage	<u>£50,191.07</u>

5. The minimum shortage was partially replaced during the course of the inspection by a transfer from office to client bank account of £7,928.97. The respondent told the Investigation Accountant that he was unable to replace the shortage in full.
6. The minimum cash shortage had arisen in the following way:-
 - (i) Minimum improper transfers from client
to office bank account £42,262.10
 - (ii) Debit balances 7,428.97

(iii) Professional disbursements incorrectly held in office bank account	500.00
	<u>£50,191.07</u>

7. Improper transfers from client to office bank account had taken place where monies had been transferred but bills of cost had not been delivered to the relevant clients.
8. A detailed examination of eight individual client matter files showed that during the period 11th December 1992 to 4th April 1996 twenty eight such transfers from client to office bank account were made varying in amount between £85.00 and £5,634.12 and totalling £42,262.10. The transfers purported to be in respect of costs for which bills were seen on each of the client matter files. The respondent admitted to the Investigation Accountant that twenty eight interim bills had not been delivered to the clients concerned nor had any written intimation of costs. He accepted therefore that the funds had been improperly transferred from client to office bank account. The transfers had been made in respect of eight client matters the particulars of which were set out in the Investigation Accountant's report.
9. Mr Alexander admitted that the purported bills referred to represented only a sample of bills not delivered as he believed he was entitled to transfer funds from client to office bank account without delivering a bill of costs or written intimation so long as he accounted to the client at the conclusion of the matter. The respondent maintained that those costs were properly due to his firm and he believed that his clients would not dispute the quantum of the bills. In fact in the three matters exemplified in the Investigation Accountant's Report it was noted that clients had requested the respondent to account to them as much as a year after the conclusion of the client's matter, but he had failed to do so. The respondent said he had been tardy in that respect owing to personal problems.
10. By way of example in his report the Investigation Accountant set out details of the matter of JK deceased in which the respondent acted for the executrix of the Will of the late JK who died on the 19th September 1994.
11. Between 31st October 1994 and 21st November 1994, assets were realised and the proceeds lodged in client bank account. There was a life policy and a building society account in the name of the deceased.
12. On 23rd November 1994 the relevant account in the clients' ledger was charged with £4,106.87 in respect of a transfer to the office bank account leaving a nil balance. The transfer was in respect of Bill Number 170, dated 24th November 1994, in the amount of £4,460.25, which had been debited to the office column of the ledger account.
13. The respondent had never delivered the bill of costs to the executrix of the estate.
14. The respondent had written to Pimms Funeral Services on 28th February 1995 in the following terms:

"We now enclose our cheque for £881.80 as per your enclosed account which please return to us receipted."

15. No cheque had been enclosed with that letter and in their letter of 17th May 1995, Pimms threatened to take legal action. The respondent replied in the following terms:

"We thank you for your letter of the 17th May. We hope this account will be able to be paid within the next fourteen days and we will be in touch with you very soon."

A further reminder was received in October 1995 but at the date of the Investigation Accountant's Report the funeral account remained outstanding.

16. The respondent indicated to the Investigation Accountant that the fees did "look high", and said that he had no specific comment regarding the non-payment of the funeral account. He agreed that estate accounts had not been prepared.
17. The respondent acted for Mr D in the purchase of a property at Guildford, at a price of £46,000.00 and for Abbey National Building Society in connection with their mortgage advance of £43,700.00.
18. The relevant account in the clients' ledger was credited, inter alia, with £2,300.00 on 7th December 1995 representing a deposit of 5% of the purchase price, thereby increasing the credit balance thereon to £2,305.00.
19. On 22nd and 29th December 1995 the relevant account in the clients' ledger was charged with transfers from client to office bank account in the amounts of £399.50 and £1,200.00 respectively, thus reducing the balance held in respect of the deposit provided by Mr D to £705.50. The transfers purported to be in respect of bills numbered 219 and 224 in the amounts of £399.50 and £1,292.50 which were debited to the office column of the ledger account.
20. The respondent confirmed that those bills had not been delivered to the client and said that they were simply "costings of time", drawn up for internal purposes, which had been debited to the office account and the corresponding funds transferred in error. He added that the "second bill was wrong and should not have been done."
21. On 7th March 1996 a reduced deposit of £2,000 was sent to the vendor's solicitors. The date of payment of the deposit was shown on the ledger account as 15th March 1996. The post-dating effectively masked an overpayment of £1,294.50 existing between 7th March and 14th March 1996 which was eliminated when the mortgage advance of £43,700.00 was received. The respondent said that he had "no idea" why the account had been posted in such a way as to conceal the overpayment and said that he had not given the bookkeeper specific instructions to do so.
22. Completion was due on 15th March and £44,030.50 was required by the vendor's solicitors. The client ledger account balance was only £42,405.50 as at that date and Mr D provided a further £732.25 as had been requested in the completion statement. That completion statement showed the "amount due to A. Alexander & Co. as £587.50 as per invoice herewith" and made no mention of the previous two bills. At the date of completion, client bank account would have held insufficient funds on behalf of Mr D to enable the transaction to be completed.

23. The client ledger account showed that in addition to the £732.25 provided by Mr D there was another credit on 15th March 1996 in the amount of £1,064.15 with the narrative "S. D - Bal monies on Comp - £1,064.15".
24. The respondent was asked if Mr D had actually provided those funds, to which he replied that he had not. The respondent contended that he could not remember from where those funds had been obtained, but did confirm that they were not provided by him and therefore must have belonged to another client.
25. He asked his bookkeeper to explain the transaction and she replied that the cheque had been on a Nationwide Building Society account and that it had not come in the post. She added, in his presence, that the respondent had personally dropped it into her tray mid way though the morning of 15th March 1996, the day of completion.
26. The respondent continued to maintain that the source of the funds were "a mystery" to him and said that he would replace the shortage and credit the £1,064.15 to a client suspense account, until such time as the identity of the client was discovered.
27. The respondent acted for Mr and Mrs W in their sale of property A at Cranleigh for £185,000 and their purchase of property B at Cranleigh for £246,000.
28. On 30th January 1995 a 10% deposit on the sale in the amount of £18,500 was credited to the relevant account in the clients' ledger. On 31st January 1995 Bill Number 214 in the amount of £2,173.75 was debited to the office column of the ledger account and an equivalent amount transferred from client to office bank account. On the same date, Bill Number 215 in the sum of £2,890.50 was debited to the office column of the ledger account in respect of the purchase and an equivalent amount transferred to office bank account.
29. Neither of those bills, which totalled £5,064.25, had been delivered to the clients.
30. Completion of the sale took place in February 1995 and completion of the purchase in March 1995. In January 1996 a further £1,430 was billed and drawn on the sale and in June 1995 and January 1996 a further £940 and £2,046 were billed and drawn on the purchase. Thus, a total of £3,603.75 was drawn in fees for the sale of property A and a further £5,876.50 was drawn in fees for the purchase.
31. The respondent admitted that, as at the inspection date, the clients had never received a completion statement, nor had any of the bills been delivered. The clients had on several occasions telephoned the firm to request bills and statements. The respondent told the Investigation Accountant that he had prepared them and added that he did not think the clients would react adversely to the quantum of the bills.
32. With regard to the debit balances, on 4th March 1996 and 5th March 1996 overpayments of £2,428.97 and £5,000, totalling £7,428.97, had been made on account of two clients.
33. In connection with the larger overpayment, the respondent acted for UHC Ltd in relation to a catering franchise agreement and as surety holder of a performance bond.

34. The clients provided the respondent's firm with a cheque in the amount of £5,000 which was to be held as surety for the provider of the franchise to be used as compensation should the clients not perform in accordance with the terms of their agreement to provide catering services to a local leisure centre. That was credited to the relevant client ledger account on 2nd December 1994.
35. On 20th December 1995 Bill Number 211 in the amount of £4,993.25 was debited to the office column of the client ledger account and this sum, plus £6.75 in reimbursed disbursements, was transferred from client to office bank account, reducing the balance on the client ledger account to nil.
36. The respondent explained that the client had convinced him that the surety bond had never been signed and therefore was not held to the order of the leisure centre. He said that he had delivered the bill to the client and properly drawn his fees. He said that the client had subsequently disagreed with the quantum of the fees and had requested that the entire amount be refunded by means of a payment to a third party.
37. A client account cheque in the amount of £5,000 was prepared by the respondent and sent to the third party on behalf of the client, however, the full details were never recorded or given to the bookkeeper. The respondent said he knew that the payment would result in a debit balance on the client ledger account and that he had overlooked transferring a corresponding amount from office bank account.
38. The Investigation Accountant went on to report upon another matter where the respondent acted under an enduring power of attorney granted on 4th August 1995. He said he had spent considerable time with the client's sister visiting various nursing homes in order to choose one for the client.
39. During the period 16th October 1995 to 4th December 1995, Mr Alexander realised £10,668.08 primarily from closure of the client's bank and building society accounts. During the period 31st October 1995 to 11th December 1995 four bills of costs totalling £10,871.48 were prepared and debited to the office column of the client ledger account. The entire proceeds of the client ledger account were then transferred to office bank account in satisfaction of those bills, thus reducing the client ledger balance to nil as at 11th December 1995. The respondent's position was that that was not a breach of the Solicitors Accounts Rules nor an ethical breach as he was the holder of a power of attorney.
40. The client died on 16th December 1995 and National Westminster Bank was appointed as executor. Since the date of its appointment the Bank its solicitors had requested Mr Alexander to account to them with details of his realisations and costs but at the date of the inspection he had failed to provide a substantive response.
41. The respondent said that he was not delaying deliberately and was aware that the matter should be dealt with promptly. He disagreed with the Investigation Accountant's suggestion that he might be concerned about advising the executors of the quantum of his fees to date and said that he felt justified in his level of charging.
42. The respondent's Accountant's Report for the year ended 30th April 1995 was qualified by a reference to a shortage on client bank account as at that date of £9,414.

The report was further qualified by reference to four improper transfers from client to office bank account, where the fee invoices had not been prepared.

The Submissions of the Applicant

43. The Law Society had resolved to intervene into the respondent's practice but the practice had been disposed of to another firm of solicitors. The respondent had not practised since.
44. A minimum shortfall of some £50,000 had been discovered, the bulk of which was attributable to costs improperly so called and transfers made from client to office account where no bills had been delivered.
45. Claims made upon the Law Society's Compensation Fund largely reflected that shortfall. The Compensation Fund had paid out some £50,000 which sum included a subvention grant made to the firm being the successor to the respondent's practice. There were pending claims in the region of £19,000. At the time of the hearing the exposure of the Compensation Fund was set at a figure of £70,130.89. In addition ten claims had been notified but had not been quantified.
46. In the light of the Investigation Accountant's Report the only proper inference to be drawn was that the respondent had been guilty of massive overcharging. The Tribunal was invited to consider that the respondent's action represented a conscious misuse of clients' funds.
47. In the matters exemplified in the Investigation Accountant's Report one related to a very small estate the value of which was £4,106.87 in respect of two items. Within ten months all assets had been collected in. It was then that the whole of the estate was taken in costs. In fact the respondent's bill was greater than the assets of the estate if Value Added tax was taken into account. The funeral account was not paid. There was misleading correspondence with the funeral directors about that. The Tribunal was invited to draw an inference that the respondent was taking all that he could get.
48. In connection with Mr. D's matter, Mr D had negotiated the purchase of a modest property. Costs had been taken prematurely from a deposit provided by the client. Two bills had been entered but had not been delivered. Nearly £1,600 had been taken in costs. The respondent had said that the second bill was a mistake. When the deposit was needed in the conveyancing transaction there was not enough money in the client's ledger account. Only about £700 was left. The problem was solved when the respondent drew a cheque for the full amount of the deposit and therefore inevitably used other clients' money for the purposes of Mr D. The shortfall on Mr D's account existed for several days until the building society advance was received. Until completion that money belonged to the building society but it was used to eradicate the shortfall. Subsequently the entries on the ledger were reversed so that the overdrawn balance was disguised. In due course a bill was delivered to Mr D which did not reveal that costs had been taken and thus the client Mr D was misled.
49. When it became clear that there was to be an insufficient balance to meet Mr D's purchase, there was a receipt of the precise amount of money required to complete. A

cheque arrived in the cashier's tray. The cashier said that the cheque was deposited personally by the respondent. It had been drawn upon a building society so the identity of the account holder was not immediately apparent. The respondent had said he could not remember and confirmed that the money had not been his. He continued to maintain that the source of funds remained a mystery. The position clearly was that the respondent took costs prematurely in excessive amounts and, when required, the exact amount to complete, including some pennies, appeared. The inference could not be avoided either that the respondent made a conscious decision to take money from someone else or repay it himself and maintain the fiction. In the submission of the applicant that appeared to be a general practice of the respondent.

50. In connection with the third example, the sale and purchase by Mr and Mrs W of properties at Cranleigh, the only possible inference was that the respondent had raided client account as a convenient source of funds.
51. In the matter of HCU Ltd the respondent held monies as a security bond. The client was not free to direct the respondent as to what was to be done with the money, nevertheless the respondent took the whole sum in costs and disbursements. The respondent said he had been convinced that the contractual obligation had not crystallised and he delivered his bill and his fees were entirely proper. The client had disagreed with the quantum of costs and the respondent's position was that he had paid the whole of the £5,000 to a third party at the client's request. The Tribunal was invited to draw the inference that that was a use of client account to repay outstanding monies and that was a cynical use of client account money.
52. In connection with the matter in which the respondent was the donee of the power of attorney and the donor had died, assets had been realised in the sum over £10,000. Such realisation had taken place in a period from October to December and in the same period four bills of costs and transfers in respect of the same had been drawn with the effect that the whole of the client's assets were wiped out. The bills had not been delivered to the client. The respondent's position was that he had not breached the Solicitors Accounts Rules nor his ethical position because he held power of attorney. A solicitor could argue that he was his own client, but that was an unattractive argument. A solicitor still owed a duty to his lay client and he could not avoid the fact that he was in a fiduciary position. He should be entirely open and frank with his client and the executors.
53. The applicant had set his case high. The facts were not disputed the respondent accepted that he had been in breach of the Solicitors Accounts Rules. The Tribunal was invited to regard this matter as one of the utmost seriousness.

The Submissions of the Respondent

54. The respondent accepted the facts. He was ashamed to be appearing before the Tribunal but had not made a conscious misuse of clients' money. The respondent had continued with practices which had taken place in firms with which he had been associated earlier. Certain bills had been delivered to the client after the Investigation Accountant's visit to put matters right. The respondent was in some difficulty in giving explanation as he had not sought access to his files following the intervention.

55. The respondent had not consciously taken money, for instance, to fund his lifestyle. He had not been guilty of hiding the paperwork, including the bills, on his files. Complete records were openly available for all to see. The respondent accepted that he had adopted a wrong course for some time. The respondent had employed an excellent cashier and bookkeeper.
56. With regard to the claims on the Law Society's Compensation Fund, many of those claims were not valid.
57. If any of the respondent's bills had been too high, the fact remained that very substantial sums of money relating costs were due to the respondent.
58. The respondent had urged a local firm to take over his firm and his existing matters. An arrangement had been made for the sharing of fees and such fees to which the respondent was entitled were to be paid straight to the Law Society's Compensation Fund.
59. At the time when the respondent had taken the actions complained of he had been under considerable pressure both in his office and in relation to personal and family matters.
60. The respondent had not practised since June 1996. His house had been repossessed and had been sold at a considerable undervalue. He believed that picture would be repeated when his office was sold. The respondent was deeply sorry. He had kept all of his local outside interests when he became a sole practitioner and had come to recognise that he should have given more time and attention to his work. He recognised that in a serious position he hoped he would be able to work as a solicitor again but would never again wish to be a sole practitioner or self employed.

The Findings of the Tribunal

The Tribunal FOUND the allegations to have been substantiated. The Tribunal felt unable to avoid the conclusion that the respondent had deliberately utilised clients' funds for his own purposes. Such behaviour would not be tolerated and the Tribunal ordered that the respondent be struck off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry in a fixed sum, to include the costs of the Investigation Accountant of the Solicitors Complaints Bureau.

DATED this 6th day of March 1997

on behalf of the Tribunal



J W Roome
Chairman

