

IN THE MATTER OF NIGEL SIMON NICHOLAS BURNELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.C. Chesterton (in the Chair)
Mr. A. Gaynor-Smith
Mr. M.C. Baughan

Date Of Hearing: 26th November 1996

FINDINGS

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

An application was duly made on behalf of the Solicitors Complaints Bureau (subsequently the Office for the Supervision of Solicitors) by Geoffrey Williams, solicitor of 36 West Bute Street, Cardiff on 12th July 1996 that Nigel Simon Nicholas Burnell, solicitor of

Stoke Bishop, Bristol might be required to answer the allegations contained in the statement which accompanied the application and that such Orders might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in that he -

- (a) misappropriated funds from his firm's client account;
- (b) created, or caused to be created, false accounting documents in relation to the said misappropriated funds.

The evidence before the Tribunal included the report of the applicant that he had spoken to the respondent on the telephone on the day prior to the hearing in which the respondent had

indicated that he did not contest the application, saying that he had heart trouble and could not face the disciplinary hearing. He intended no discourtesy.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Nigel Simon Nicholas Burnell, solicitor of Stoke Bishop, Bristol 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 £2,115 inclusive.

The facts are set out in paragraphs 1 to 6 hereunder.

1. The respondent, born in 1952, was admitted a solicitor in 1977. At the material times he practised as a solicitor in partnership under the style of Pinsent & Co. at 3 Colmore Circus, Birmingham. He resigned from the partnership on or about 6th March 1995.
2. By a letter to the Solicitors Complaints Bureau (the Bureau) dated 28th March 1995 Messrs. Pinsent & Co. confirmed a prior telephone call to the Law Society in which a complaint was made about the conduct of the respondent.
3. Messrs. Pinsent & Co. instructed the firm's chartered accountants, Messrs. KPMG of 2 Cornwall Street, Birmingham to carry out an investigation. That related to the firm's accounting procedures generally and to the activities of the respondent in particular.
4. The Tribunal had before it a copy of KPMG's report.
5. The Report identified eight cheques that had been paid from client account on the authority of the respondent apparently without any authority from the client. The six cheques dated between 19th March 1993 and 6th February 1995 had been made in the sums ranging between £964.71 and £6,000 and totalled £25,270.71. One cheque had been stopped as it had not been presented at the time of the investigation. One payment was drawn on the account of the respondent's mother and at the time of the Report an investigation was underway to determine if the respondent received that amount with her permission.
6. By a letter to the Bureau dated 24th April 1995 Messrs. Pinsent & Co. exhibited a copy of the Report and confirmed that the sum of £20,601.04 had been restored to client account by the partners. That represented the cheques from client account paid to or for the benefit of the respondent not including the sum paid from his mother's account and the cheque which was countermanded prior to payment.

The submissions of the applicant

7. Cheques had been made payable from client account to the respondent and his wife. There was no doubt that the monies had been used for the respondent's personal benefit. In the papers before the Tribunal the respondent had confirmed that he did not contest the disciplinary proceedings and he admitted the allegations on the telephone to the applicant on the evening before the hearing.
8. The respondent had indicated to the applicant that he no longer wished to be in the law and had not been employed in the law for some time.

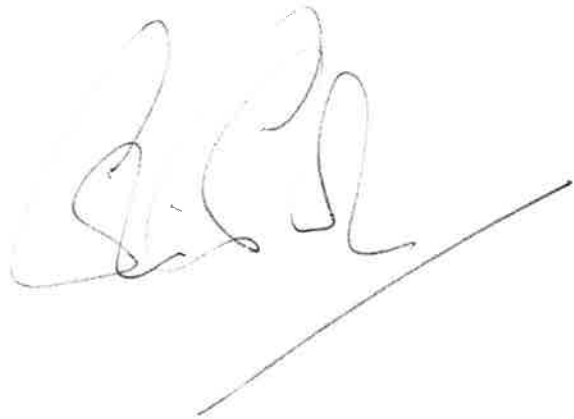
9. The applicant put the matter as one of serious dishonesty. Both the allegations referred to the respondent's dishonest course of action.
10. The applicant made no criticism of Messrs. Pinsent & Co. who had acted in an exemplary fashion.

The Tribunal FOUND both the allegations to have been substantiated. The respondent had acted with considerable dishonesty over a period of some two years. Not only had he dishonestly taken clients' money, but he had deceived his clients and his partners. He had sought to cover his tracks. The respondent's conduct amounted to conduct unbecoming a solicitor at the highest end of the scale. Such conduct would not be tolerated. The Tribunal Ordered that the respondent be struck off the Roll of Solicitors and further Ordered him to pay the applicant's costs in a fixed sum.

DATED this 27th day of January 1997

on behalf of the Tribunal

J.C. Chesterton
Chairman

A handwritten signature in dark ink, appearing to be 'J.C. Chesterton', written over a horizontal line.