

IN THE MATTER OF STEVEN ROBERT CLARK, 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 Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 17th July 1996 that Steven Robert Clark solicitor of Luton, Bedfordshire 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 been guilty of conduct unbecoming a solicitor in each of the following circumstances, namely that he had:-

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (iii) failed to pay monies into client account in accordance with Rule 3 of the said Rules;

- (iv) utilised clients' funds for his own purposes;
- (v) effected book transfers in order to conceal shortages on client bank account;
- (vi) acted for parties in property transactions contrary to Rule 6 of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 26th November 1996 when Roger Field solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent was represented by Rex Howling of counsel instructed by Messrs. Ambrose Appelby of 7 New Square, Lincoln's Inn, London, WC2.

The evidence before the Tribunal included the admissions of the respondent and his oral evidence. He strongly denied, however, that he had been dishonest.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Steven Robert Clark of Luton, Bedfordshire, 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 to be taxed if not agreed.

6cc The facts are set out in paragraphs 1 to 19 hereunder.

1. The respondent, born in 1957, was admitted a solicitor in 1983. Prior to the 18th September 1994 the respondent practised in association with two other solicitors at Dunstable, Bedfordshire. From the 18th September 1994 the respondent carried on practice on his own account under the style of Steven Clark and Co. at 2 High Street, Flitwick, Bedfordshire and at 148 Sundon Park Road, Luton, Bedfordshire.
2. Upon due notice the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) carried out an inspection of the respondent's books of account. The Tribunal had before it a copy of the Investigation Accountant's Report dated the 10th May 1996.
3. The report revealed that separate sets of books had been maintained in respect of the respondent's two offices. They were not in compliance with the Solicitors Accounts Rules.
4. Lists of liabilities to clients as of the 31st March 1996 in respect of both offices were produced for inspection. The items were in agreement with the balances shown in the clients ledgers but they did not include further minimum liabilities to nine clients totalling £29,250.93. A comparison of their combined total, including the additional items, with cash held on client bank accounts at that date after allowance for uncleared items revealed the following position:-

Liabilities to clients per the books	£209,983.36
Add: Minimum liabilities not shown by the books	<u>29,250.93</u>
	239,234.29
Cash available	<u>209,983.36</u>

Minimum cash shortage

£29,250.93

5. The cash shortage arose following improper transfers from client to office bank account of £20,784.50 and improper lodgements of clients' funds in office bank account in the sum of £8,466.43.
6. The cash shortage was partly rectified during the inspection by the delivery of a bill for £910.62.
7. Improper transfers had been made from six individual client ledger accounts. The transfers related either to unpaid professional disbursements or the transfers made were in excess of bills delivered.
8. The Investigation Accountant's Report set details of two ledgers upon which such improper transfers had been made. In the first matter a transfer from client to office bank account on the 21st April 1993 of £4,406.95 was in respect of an original bill found on the client matter file which the respondent had admitted had not been delivered to or approved by the Court of Protection. The respondent said he was not aware that his costs needed to be taxed and approved. The transfer from client to office bank account on the 30th April 1994 of £10,557.23 gave rise to a like credit balance on the office column of the client ledger account. The respondent said he did not know why that transfer had been made. The two improper transfers totalled £14,963.48. The resultant shortage was partly rectified on the 13th June 1994 by the transfer from office to client bank account of £3,588.49. Three other payments from client account were not supported by any documentary evidence on the client matter file.
9. The Investigation Accountant further noted that the respondent had not sent any approved accounts to the Public Trust Office in respect of the matter since he was appointed trustee in 1989.
10. The respondent had been appointed as a Court of Protection Receiver for a Mr M on the 18th July 1981. Mr M died on the 21st March 1992. The respondent did not act in connection with the probate. The ledger relating to Mr M's affairs showed a transfer from client to office bank account on the 13th February 1992 of £1,751.63 in respect of an original bill found on the client file which the respondent admitted had not been approved by the Court of Protection. The respondent said he was not aware that his costs needed to be taxed and approved. A transfer from client to office bank account on the 30th September 1992 of £2,327.67 was utilised to fund a like payment from the office bank account to Bells solicitors in respect of interest due on the sum of £60,000 held to their order in respect of a property transaction which did not complete. The respondent said he had not appreciated that the payment of interest should have been made from his office resources.
11. A transfer from client to office bank account on the 30th November 1994 of £1,526.51 gave rise to a like credit balance on the office column of the client ledger account. The respondent said he did not know why that transfer had been made.
12. The three improper transfers and the resulting shortage remained unrectified.

13. The Investigation Accountant went on to report that a payment of £1,055.71 to the C estate on the 6th April 1992 was not supported by any documentation on the client matter file. Further the respondent had not sent appropriate accounts to the Public Trust Office for the period 18th July 1991 to the 21st March 1992.
14. In the matter of Mrs D deceased. A number of transfers had been made from office to client account. Two transfers had been made to client account one on the 30th November 1994 (£2,479.59) and one on the 17th February 1995 (£2,766.47). The Investigation Accountant noted that the firm's charges were considerably less than the sum transferred from client account to office account and the two transfers from office account to client account provided the estate with sufficient funds to enable distribution to the residuary beneficiaries to be made. A client bank account receipt on the 30th November 1994 of £3,613.26 in respect of an Inland Revenue refund was shown in the accounts and at the inspection date only £486.43 stood to the credit of the ledger account.
15. Improper lodgements of clients' funds into office bank account gave rise to a shortage in respect of four clients in sums ranging between £1,324.37 and £3,261.93 totalling £8,466.43. The largest sum was in connection with P deceased where the respondent acted in the administration of the estate. He had been unable to produce the relevant client file to the Investigation Accountant. The office section of the relevant client ledger showed a lodgement of £5,713.34 (received from Woolwich Building Society) into the office bank account on the 26th October 1994 giving rise to a credit balance of that amount on office account but a shortage in that sum on client account. The shortage was reduced on the 1st March 1996 by the transfer of £2,451.41 from office to client bank account.
16. The respondent acted for Mr and Mrs B who were the executors in the estate of Mrs EB who died on the 23rd January 1993. The office column of the client ledger revealed a receipt into office account of £7,767.03. The respondent had been unable to explain why that money had been paid into office account. Two office bank account payments of £2,500 on the 26th February 1993 were in respect of legacies. The balance of the funds and the constant shortage of £2,741.28 had been improperly retained in office bank account and the position remained unrectified.
17. An examination of the transfer records revealed a pattern of entries which purported to show office to client and client to office transfers recorded on the client ledger accounts during the period from the 2nd February 1995 to 15th March 1996. None of the book entries was supported by a corresponding movement of cash between the relevant accounts. The effect of those transfers had been from time to time to conceal the shortage on client account at each month's end. The shortage fluctuated from time to time but it never fell below £17,230.92 and was at its highest when it reached £30,229.29. The respondent told the Investigation Accountant that he did not know how the concealed shortage had arisen or when it had originated.
18. The respondent admitted acting for the purchasers, vendors and mortgagees in connection with numerous property transactions where the respondent agreed that the vendors involved were property developers.

19. It was noted that the respondent had obtained an unqualified Accountant's Report on the 18th October 1995. The Investigation Accountant pointed out that the respondent had filed an unqualified Accountant's Report with the Law Society for the period ended 30th April 1995 and no mention was made therein of the numerous breaches of the Solicitors Accounts Rules which were in existence during the period.

The Submissions of the Applicant

20. The philosophy behind the Solicitors Accounts Rules was the separation of clients' moneys from a solicitor's own money. The Rules governed the circumstances in which moneys might be moved between client and office accounts. The permitted transfers were carefully defined in the Rules. The respondent had flagrantly breached those Rules.
21. The respondent had not admitted dishonesty but in the submission of the applicant in the admitted facts set out in the Investigation Accountant's Report there might be drawn an irresistible inference that the respondent had behaved dishonestly.

The Submissions of the Respondent

22. Having been admitted as a solicitor in 1983 until October 1989 the respondent was junior partner with the firm of Stevens & Price practising from four offices in the Luton area.
23. While he was a partner at that firm he was the only partner who attended the Sundon Park and Flitwick offices. It became apparent to the respondent in 1989 that there were serious problems at one of the other offices run by the senior partner. The respondent made the other partners in the firm aware of his concerns and he was asked if he could attend that third office. He considered that to be impractical and took the view that the only way he could protect his position was to dissolve the partnership. He did that and as from the 31st October 1989 the remaining partners continued to practise from two of the offices and the respondent agreed to purchase and retain the Sundon Park and Flitwick offices. He continued to practise from those two offices. Some eighteen months after the dissolution of the firm the senior partner was struck off.
24. The respondent practised alone from the Sundon Park and Flitwick offices with the assistance of a secretary at each office. That proved extremely difficult as the offices were some 30-40 minutes drive apart. The respondent attempted to dispose of the Flitwick office but there was no demand for commercial premises. The respondent's wife, who had previous experience as a solicitor's employee as a conveyancer, assisted on a part time basis which caused some personal difficulty as they had a two year old son.
25. Office security and personal safety at both offices was always a major concern. The Flitwick office had been burgled on three occasions and the Sundon Park office twice leading to expense and disruption.

26. In February 1993 the respondent employed an experienced conveyancer at the Flitwick office. Shortly after that the respondent amalgamated with another firm who practised at South Dunstable. The respondent's practice was primarily non-contentious and the other firm was predominately a criminal firm. The two firms' association came to an end on the 18th September 1994 when the respondent decided it was impractical to support and contribute financially to obtaining a Legal Aid franchise in respect of all three offices.
27. The respondent's major difficulty was running two offices. The recession in the housing market and the related reduction in conveyancing instructions persuaded the respondent not to run up a large overdraft. The respondent hoped to be able to survive with a low overdraft limit through the assistance of his wife, his step daughter and step son in law who acted as bookkeepers. They were not employed and undertook bookkeeping from November 1989 on a voluntary unpaid basis. The respondent's step daughter was a qualified accountant.
28. The respondent had inherited the Court of Protection matters from a retired partner. he did not have a great knowledge as to the Court of Protection and its procedures. He misunderstood the situation. The respondent transferred money to client account because the interest earned on his client account was greater than that received on the receivership account. The bill represented proper costs earned over a three and half year period. One transfer of monies of £10,557.23 coincided with the last day of the firm's accounting year. The entry had been made erroneously as a result of the respondent's unacceptable demands and expectations of those assisting him and of the computerised accounts software and hardware package which he had provided. The respondent took full responsibility for that and confirmed that there was no dishonesty on his own part or that of any staff.
29. The bill in respect of Mr M deceased related to work undertaken prior to and after he had been made a patient of the Court of Protection. The respondent had come to appreciate that the costs should have been taxed by the Court of Protection.
30. The sum of £60,000 had been held by the respondent in connection with the sale of the late Mr M's house to his daughter. Mr M's other two children objected and the daughter agreed not to proceed to completion. The sum of £60,000 was returned to her solicitors together with interest. The respondent accepted that the payment of interest should have been from his office account. It was mistakenly paid from client account.
31. The recorded transfer of £1526.51 on 30th November 1994 was in relation to a half yearly account of costs details of which the respondent had given to his bookkeepers. He had been unaware that the account had not been typed and delivered. The transfer which apparently had not been supported by relevant documentation on the file was properly made. The document was not available as the respondent had been in the process of transferring the papers to another firm of solicitors instructed to act in the matter.
32. In the matter of Mrs D deceased, it had been dealt with at the Flitwick office and the experienced conveyancer had dealt with the matter throughout. The respondent

believed the transfers in question had arisen as a result of insufficient details being given to the firm's bookkeepers.

33. With regard to the reference to a shortfall on three further ledgers. One was a personal injury matter where the client was the respondent's mother-in-law. A settlement had been reached with the insurers and when the respondent received a cheque it was paid into office account. He accepted that it was wrong not to pay it into client account and then transfer the same to office account having rendered a bill. The improper transfer of £410.99 was in respect of sums to pay for medical reports and counsel's fees which had not been settled. The improper transfer of £221.88 had arisen in a similar way. With regard to the sum of £29.99, the respondent said it was probably a sum received and paid into the wrong account which was subsequently rectified.
34. The Investigation Accountant's Report referred to a client account deficit of £28,340.31 at the date of the investigation. The respondent had caused a schedule to be prepared showing transfers to clients' accounts which were in deficit after the date of the Investigation Accountant's Report which resulted in the deficiency being reduced to £3,350.00. All such transfers had taken place. The money to fund those transfers had come from funds which were due to the firm and would otherwise have remained in office account. The respondent had raised a loan in the sum of £4,500 to cover the deficit but had not been able to pay it into the firm's accounts owing to the intervention into his practice by the Law Society. That money was, however, held on deposit and was available for use to offset the remaining shortfall.
35. In general terms improper lodgement of client funds into office account had all been rectified and had arisen because details of bills (including VAT and disbursements) had been passed to the respondent's bookkeeper but the bills had not been typed. He had been unaware of that. The respondent accepted that because of the delay between the transfer of money and the actual typing of the bill temporary shortages on client account did occur. At the end of each month his new computerised system would refuse to allow a reconciliation at the month end unless any deficiency had been rectified. The respondent's bookkeepers therefore made transfers from client account to office account in order to achieve reconciliation based on information that the respondent had supplied to them as to bills being prepared on completed matters. There had not been any loss to any client.
36. With regard to the alleged breach of Practice Rule 6, the respondent accepted that there had been transactions in which he was asked to act for clients who purchased properties for investment purposes. He subsequently accepted instructions from prospective purchasers of those properties but had not taken proper account of the strict wording of Rule 6. He had taken the view that as long as all parties, including the mortgagees, were made fully aware of the position then it would be in order to proceed. The respondent had come to accept that that was wrong and that he did breach Rule 6.
37. The Tribunal was invited to note that the transfers which had been made and to which objection had been raised were made in respect of costs. In the respondent's submission his fault lay in not complying with the Accounts Rules as they related to the

rendering of bills of costs and the subsequent transfer of moneys held on account. At no time was money transferred from client account for the respondent's own use in terms of extravagant living. The money that was transferred was used to finance the running of the practice.

38. The respondent accepted that the discharge of his responsibilities whilst being a sole principal fell below that which the profession and the public expected and deserved. The Tribunal was invited to take into account the pressures under which the respondent was working and the extent to which his difficulties were as a result of problems running out of control rather than being the result of any dishonesty on his part or any of his employees.
39. The respondent summarised his position and attributed the difficulties which he had experienced to the fact that he worked with staffing levels which proved inadequate, the failure of his accounts assistance, the respondent's own inexperience and naivety in thinking that he could effectively and properly run two offices given the distance between them and the time spent in travelling and in delegating too much responsibility to unadmitted members of staff.

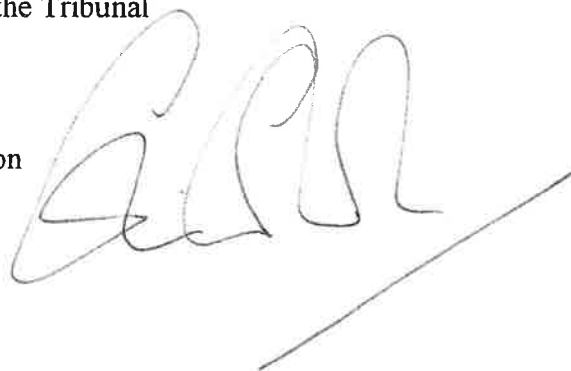
The Tribunal FOUND all of the allegations to have been substantiated, indeed they were not contested.

The Tribunal took the view that the sole purpose of the book transfers was to conceal an existing cash shortage on client bank account. The effect of those transfers was artificially to reduce liabilities to clients and thus to enable a reconciliation of cash available with apparent liabilities to clients. That was a technique known as "teeming and lading". It was inconceivable that those transfers occurred as the result of errors. The whole pattern of the movements of money indicated prior consideration. The Tribunal were satisfied beyond reasonable doubt that the respondent had acted dishonestly. In those circumstances it was right that he should be struck off the Roll of Solicitors and pay the costs of the application and enquiry to be taxed if not agreed.

DATED this 27th day of January 1997

on behalf of the Tribunal

J C Chesterton
Chairman

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