

IN THE MATTER OF DAVID JOHN KING AND
RESPONDENT 2 solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G B Marsh (in the Chair)
Mr. J N Barnecutt
Mr. K J Griffin

Date Of Hearing: 12th December 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 David Rowland Swift solicitor, of 19 Hamilton Square, Birkenhead on the 31st July 1996 that David John King of 606 Bromford Lane, Ward End, Birmingham, B8 2DP and RESPONDENT 2 of 606 Bromford Lane, Ward End, Birmingham, B8 2DP solicitors, 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 respondents had each been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that they had:

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (iii) utilised clients' funds for the purposes of other clients;
- (iv) utilised clients' funds for their own purposes.

At the commencement of the hearing with the agreement of the parties and the consent of the Tribunal the applicant withdrew allegation (iv) against RESPONDENT 2

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 12th December 1996 when David Rowland Swift, solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant, David Morris solicitor of D B Morris & Co. solicitors of Portland House, 5-7 Temple Row West, Birmingham, B2 5NY appeared for Mr King and Mr Slevin of Counsel instructed by RESPONDENT 2 appeared for RESPONDENT 2

The evidence before the Tribunal included the admissions of Mr King on the facts and the allegations. RESPONDENT 2 denied the allegations. The Tribunal had before it exhibits K&B1 and K&B2, respectively being a medical report submitted on behalf of Mr King and references submitted in support of RESPONDENT 2

At the conclusion of the hearing the Tribunal made the following orders.

The Tribunal ORDERED that the respondent David John King of 606 Bromford Lane, Ward End, Birmingham, B8 2DP, 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 £3,976.31 inclusive (being 3/4 of the whole).

The Tribunal ORDERED that the respondent RESPONDENT 2 of 606 Bromford Lane, Ward End, Birmingham, B8 2DP solicitor, pay a fine of £1,500 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,325.44 inclusive (being 1/4 of the whole).

The facts are set out in paragraphs 1 to 30 hereunder.

1. Mr King, born in 1946, was admitted a solicitor in 1972. RESPONDENT 2 born in 1946 was admitted a solicitor in 1973. At the material times they carried on practice in partnership under the style of Kings at 606 Bromford Lane, Ward End, Birmingham, B8 2DP. They were held out to be full equity partners, but RESPONDENT 2 was in reality a salaried partner.
2. On the 19th June 1996 the Adjudication and Appeals Committee of the Law Society resolved to intervene into the respondent's practice. The intervention did not proceed as a disposal of the practice was arranged to RESPONDENT 2 who continued to practise from the same premises as a sole practitioner.
3. The Law Society had decided upon an intervention into the respondent's practice following an inspection carried out by the Investigation Accountant of the Law Society.
4. The inspection had begun at the respondents' office on the 8th May 1996 and the Investigation Accountant's Report dated the 31st May 1996 was before the Tribunal.

5. The report revealed that the practice had been established 25 years earlier and the two respondents had practised in partnership for the previous two years. They conducted a general practice assisted by an unadmitted staff of ten.

6. It was revealed that the books of account were not in compliance with the Solicitors Accounts Rules as they contained false entries and further breaches of the Solicitors Accounts Rules. In the circumstances no opinion could be expressed as to whether or not sufficient funds were held in client bank accounts to meet the firm's liabilities to clients. A minimum cash shortage of £62,415.04 existed on client bank account as at the 30th April 1996.

7. The minimum cash shortage arose in the following way:

(i)	Clients' funds improperly retained in office bank account	£17,690.73
(ii)	Overpayments	7,192.30
(iii)	Unidentified book difference	<u>4,659.73</u>
	Agreed minimum cash shortage	29,542.76
(iv)	Unrecorded liabilities	<u>32,872.28</u>
		<u>£62,415.04</u>

8. The respondents agreed that a shortage of £29,542.76 existed on client bank account as at 30th April 1996 of which £9,098.31 was rectified during the inspection by way of transfers from client to office bank account. Mr King said that "I fully accept that I have to make a transfer of the full balance (£29,542.76 less the £4,659.73 in respect of the unidentified book difference) in the near future and will let you know when I have done so". He said that he believed the unidentified book difference of £4,659.73 was due to computer errors and he would investigate and report on these matters.

9. The respondents did not agree the further minimum shortage of £32,872.28 in respect of additional unrecorded liabilities.

10. During the period 1st October 1995 to 30th April 1996 forty two inaccurate entries varying in amount between £22.61 and £2,348.45 and totalling £17,690.73 were made in individual client ledger accounts with the narrative "trf" or "transfer from office". Those entries had the effect of creating or inflating credit balances thereon and as a result hid the alleged misuse of client funds.

11. The respondents admitted that there were no corresponding transfers of cash from the office to client bank accounts in respect of those book entries. They said that they did not agree that the entries were "false" and said that due to the books and records not being updated on a daily basis, payments had been made which had inadvertently caused the relevant ledger accounts to go into debit. The entries had been made to enable the payments to be posted as their computer software would not allow the creation of a debit balance on a client ledger account. They said that the entries were not made to conceal the fact that the payment had been in excess of the funds properly available. It was agreed that the entries were incorrect and that the amounts overpaid represented a misuse of client funds.

12. Mr King agreed with the Investigation Accountant that, in some cases, the fact that there were insufficient funds available to allow for the proper payments to be made was due to earlier transfer of clients' funds to office bank account in respect of interim costs taken on estate matters where the amounts transferred had been in excess of those agreed when the estate accounts had been finalised.
13. An examination of a number of probate matters and their associated client ledger accounts revealed a pattern of numerous interim bills being generated and costs transferred from client to office bank account against such bills throughout the relevant period of administration.
14. Mr King assured the Investigation Accountant that all such interim bills of costs had been delivered to the relevant client prior to any transfer of funds taking place. It was, however, reported that written confirmation received from four separate clients indicated that none of the interim bills totalling £37,967.16 charged to their relevant office ledger accounts, and which costs had been transferred, had been received by them. Each of them confirmed that the letters, seen in the client correspondence files, which purportedly enclosed the bills in question addressed to the client had not been received.
15. ~~RESPONDENT 2~~ said that he was not able to make any substantive comment at this stage as the matters in question had all been handled by Mr King.
16. Of the unrecorded liabilities of £37,967.16, £32,872.28 remained as at 30th April 1996 following the delivery of a statement of account to the relevant client to the value of £5,094.88.
17. The Investigation Accountant's Report set out details of two client matters by way of example. Mr King acted for the executor and executrix Mr H and Miss W in connection with the administration of the estate of H deceased. The completed estate had recorded assets credited to the relevant client ledger account of £56,975.20.
18. Between September 1995 and 15th March 1996 thirteen bills of costs, varying in amount between £60.89 and £4,925.25 and totalling £15,252.39 and representing some 26% of estate assets realised had been drawn. During the same period there were nineteen cash transfers from client to office bank account varying in amount between £38.07 and £5,300 and totalling £19,279.07.
19. Miss W confirmed that she had not received any of the bills or letters referred to.
20. Mr King was unable to explain why Miss W had not received bills or letters. When it was put to him, he did not agree that the letters and bills of costs were in fact fictitious. He said that final estate accounts and a statement of account had been prepared and delivered to Miss W. She had received them but had not agreed the figures.
21. The firm acted for the executor and executrix Mr S and Mrs P in connection with the administration of the estate of S. Deceased, which had a net probate value of £173,629.00.

22. Between 18th August 1995 and 29th February 1996 eleven bills of cost varying in amount between £117.50 and £8,225.00 and totalling £14,926.68 had been drawn. During the same period, there were sixteen transfers from client to office bank account, varying in amount between £28.86 and £8,225.00 and totalling £15,349.72.
23. Mr S confirmed that he had not received any of the bills or letters alleged to have been sent to him. Mr King was unable to explain why the bills or letters had not been received. Again he could not agree that the letters and bills on the correspondence files were fictitious and that they had been generated and placed on the relevant client correspondence file in order to disguise the improper use of the clients' funds throughout the administration of the estate.
24. Mr King said that the bills had subsequently been delivered which rectified any possible shortage as at 30th April 1996.
25. The report revealed a shortage on client account which had been rectified prior to the inspection.
26. During the period December 1994 to 30th September 1995 a further sixty seven inaccurate book-keeping entries, varying in amount between £0.38 and £1,542.39 and totalling £17,933.06 had been made in individual client ledger accounts with the narrative "trf" or "transfer from office". Those entries also had the effect of either creating or inflating credit balances and concealed the alleged misuse of client funds.
27. It was admitted that there were no corresponding transfers of cash from the office to client bank account in respect of those book entries, and that because the books and records had not been updated on a daily basis payments had been made which had inadvertently caused the relevant ledger accounts to go into debit. They said that the entries had been made to enable payments to be posted, and that the entries had not been made to conceal the fact that the payments had been in excess of the funds properly available.
28. The respondents agreed that the entries were incorrect and that the amounts overpaid represented a misuse of client funds.
29. Mr King again agreed that, in some cases, there were insufficient funds available to allow for the proper payments to be made owing to the earlier transfer of client funds from client to office bank account in respect of interim costs taken on estate matters, and that the sum of those amounts transferred had been in excess of those agreed when the estate accounts had been finalised.
30. The resultant shortage on client bank account of £17,933.06 had been rectified prior to the inspection by way of actual transfers from office to client bank account.

The Submissions of the Applicant

31. Despite the fact that ~~RESPONDENT 2~~ was a salaried partner, both respondents were held out as full partners in the firm and both were equally responsible for compliance with the Solicitors Accounts Rules and the handling of clients' monies.

32. The applicant accepted the respondents' explanation that their firm's accounts computer system was designed to prevent overdrawing on client account. It would only permit a payment out of client account to be posted if funds appeared to be available on the computer record. A system had been adopted of inputting transfers of office funds to clients ledger which had not been matched by a corresponding transfer of cash at the bank. On an earlier visit the Investigation Accountant had discussed this unsatisfactory practice. A shortfall had been eliminated at a year end and unfortunately, as revealed in the report that was before the Tribunal, that practice had in fact continued. The thrust of the applicant's submission in connection with this arrangement was not that the respondents had been dishonest but they had failed to operate the system to prevent debit balances arising. Indeed the system had been bypassed in a particular way.
33. In the submission of the applicant the situation was rather different where transfers had been made from client to office account in probate matters. Mr King had handled all such matters. The Investigation Accountant had looked at sixty five of them where the pattern was that bills had been generated on a frequent basis and frequent transfers had been made from client to office account. The Investigation Accountant had considered that pattern to be unusual and she had studied the relevant papers. She had ascertained that in the majority of cases Mr King had been appointed sole executor. Frequent transfers from client to office account had been made while the matter remained current and then immediately prior to the preparation of final accounts a final bill of costs had been delivered. On many occasions this had been found to be different from the sums of money actually transferred in the past. It was at that stage that Mr King arranged to make correcting transactions. In the two matters set out in some detail in the Investigation Accountant's Report it had been clear that bills had been drawn and kept on the files but they had not been delivered to the clients. That had represented a deliberate and improper course of conduct representing a method of securing the transfer of clients' funds improperly.
34. The applicant accepted that Mr King had had conduct of those probate matters and had demonstrated a deliberate course of action. The applicant accepted that the fourth allegation could not lie against RESPONDENT 2 and he did not pursue that allegation. RESPONDENT 2 could not, however, avoid the strict liability with which he was fixed under the terms of the Solicitors Accounts Rules.
35. In the submission of the applicant Mr King had followed a dishonest course of conduct.

The Submissions of Mr King

36. Mr King denied that he had been guilty of dishonesty.
37. Mr King had practised for twenty five years in a part of Birmingham where it was necessary for a solicitor to work very hard to generate goodwill and run the moderately successful practice which he had. A large part of the practice concerned probate work: Mr King was the sole executor in many wills (indeed he was the sole executor in about half of all wills drawn by him). In the great majority of cases the

estates were of modest size. In those circumstances it was not necessary to issue to oneself an interim account. The executor was at the end of the day responsible to the beneficiaries. There was nothing to prevent a sole executor solicitor from putting his bill through the books in the ordinary way. All bills attracted value added tax and in all cases the value added tax had been paid on the interim bills. If when drawing the final accounts it was discovered that the interim bills had provided a figure for costs greater than was considered appropriate when the matter had been finalised, it had been Mr King's practice to draw a credit note and then make a transfer of the relevant sum from office to client bank account. No client had suffered in any way and no client had suffered loss.

38. Because the respondents encountered difficulty with the computer system (which would not permit the posting of a transaction which would overdraw client account), a manual set of books had been kept which accurately showed the client account position. The respondents' own accountant had explained that the refusal of the computer system to post a transaction which overdraw on client account could be overcome by posting a transfer from office to client account. It followed that a corresponding transfer of cash should have been made at the bank. Although this was done in some cases, it was accepted that a corresponding cash transfer was not always made.
39. Mr King said that he put right debit balances on client account as soon as they were drawn to his attention. Mr King had been entirely open and frank about debit balances and indeed had handed a full list of them to the Investigation Accountant at the commencement of the inspection.
40. At the time of the hearing ~~RESPONDENT 2~~ no longer used the computerised accounts system and had returned to the former manual system. The accounts system had cost a great deal of money and the respondents had been assisted by outside computer experts.
41. Mr King had never received any complaints with regard to the administration of estates and he had always made it his practice to keep all interested parties fully informed of progress.
42. Mr King had never made any attempt to hide the matters upon which the Investigation Accountant had reported. The position was open and available for all to see. Monies transferred from client account were in all cases in respect of work properly done. No client had suffered loss. Mr King had not behaved dishonestly.
43. Since the intervention into the practice, Mr King had decided not to go back into private practice. He was a capable lawyer who was just bad at matters of administration. He ran a very busy practice and had to work very long hours allowing matters of administration not to be given the priority they deserved.
44. Mr King had lost his livelihood following the intervention and disposal of the practice and he was now reliant for income upon social security.

45. The Tribunal was invited to take the view that the case before them was not of the most heinous nature, and that Mr King was not a dishonest solicitor pillaging client account.
46. Mr King had not enjoyed the best of health in the previous two years.
47. Mr King had very properly accepted responsibility for the sixty five probate matters referred to in the Investigation Accountant's Report. These matters were his and his alone.

The Submissions of RESPONDENT 2

48. Following the withdrawal of allegation (iv) against RESPONDENT 2 he was compelled to accept that under the Solicitors Accounts Rules he was liable and could not avoid strict liability in his capacity as a partner for breaches of these Rules.
49. RESPONDENT 2 had joined Mr King in partnership in December 1993 (having previously been engaged in another partnership in the Birmingham area) and the new computerised accounts system had been installed shortly thereafter. A backlog of recording transactions had occurred while the transfer from a manual to a computerised system had taken place. There had been a great deal of trouble with the computer, the firm had employed a book-keeper and an assistant bookkeeper.
50. The backlog of work had been caused because of difficulties with the preparation of reconciliations. The problem had been recognised and a great deal of effort had gone into sorting it out. At all times manual records were kept to ensure that there was not a complete breakdown in the keeping of accounts. All had been open and above board and when the Investigation Accountant arrived at the firm's offices everything had been put to her very clearly indeed.
51. Mr King accepted and RESPONDENT 2 confirmed that it was the case that Mr King was in charge of the firm's financial affairs. RESPONDENT 2 had undertaken litigation work and his involvement with the handling of clients' money was not as great as that of Mr King. With hindsight RESPONDENT 2 accepted that he should have been more involved with compliance with the Solicitors Accounts Rules and the financial running of the firm.
52. RESPONDENT 2 had been a partner in the firm only a short time when the Investigation Accountant had attended. No client had suffered any loss at all and indeed the public was not in any way involved with the breaches. It was, in the submission of RESPONDENT 2 a purely internal matter in respect of which there had been no public awareness.
53. In view of RESPONDENT 2 particular circumstances and the fact that although he was aware of the general problem he was not aware of the specific problems placed before the Tribunal, it would be appropriate for the Tribunal to exercise a considerable degree of leniency in imposing an appropriate sanction upon him.

The Findings of the Tribunal

The Tribunal FOUND all of the allegations to have been substantiated against Mr King and allegations (i), (ii) and (iii) to have been substantiated against RESPONDENT 2

Previous Findings of the Tribunal

There had been two previous Findings of the Tribunal in respect of Mr King.

On the 27th February 1990 the following allegations were substantiated against Mr King, the allegations were that he had been guilty of conduct unbecoming a solicitor in that he:

- (a) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1986;
- (b) utilised money from clients' accounts other than as permitted by Rule 7 of the said Rules contrary to Rule 8 of the said Rules;
- (c) utilised clients' funds for the purpose of other clients;
- (d) utilised clients' funds for his own purposes;
- (e) delivered late or failed to deliver an Accountant's reports notwithstanding Section 34 of the Solicitors Act 1974 and the rules made thereunder;

The following allegations were made both against Mr King and Mr Peppercorn and were found to have been substantiated, they were that each of them had been guilty of conduct unfitting a solicitor in each of the following respects:

- (f) that they had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1986;
- (g) that they had utilised money from clients account other than as permitted by Rule 7 of the said Rules contrary to Rule 8 of the said Rules;
- (h) that they had utilised money from client account for the purposes of other clients;
- (i) that they had utilised money from clients' account for their own purposes;
- (j) that each had delivered late or failed to deliver Accountant's Reports notwithstanding section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (k) that judgement had been entered against them and each of them in the High Court in a sum of £235,875.96 together with interest in respect of debt incurred in connection with their practice which judgement remained unsatisfied

Allegations (l), (m) and (n) were made against Mr Peppercorn alone. Supplementary allegations had been made against Mr King and were that he had been guilty of conduct unbecoming a solicitor in that he had:

- (o) been guilty of unreasonable delay in the conduct of professional business;
- (p) been responsible for unreasonable delay in the delivery of Trust papers and Trust funds;
- (q) been guilty of excessive and/or unreasonable delay in dealing with Trust affairs

The Tribunal found the allegations to have been substantiated remarking that they had not been contested. It said that no client had lost any money in respect of the poor keeping of accounts. Moreover the Tribunal appreciated that the breaches of the Accounts Rules were not the worst of their kind. The Tribunal considered that Mr King had some justification in the way in which he dealt with various requests in relation to a client's share in a trust fund in respect of which complaint had arisen. They also took the view that it was right to exercise some leniency and ordered that Mr King (together with Mr Peppercorn) should each to pay a fine of £1,000 together with the costs (as to one half each) of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court.

On the 1st December 1992 the Tribunal found substantiated an allegation that Mr King had been guilty of conduct unbecoming a solicitor in that he had practised as a solicitor in breach of conditions imposed upon his practising certificate in respect of the practice years commencing on the 1st November 1990 and the 1st November 1991.

On that occasion the Tribunal considered there was no doubt that Mr King had been through a very difficult time indeed. The Tribunal also noted that his books of account had at that time been given a clean bill of health. Although the Tribunal took the view that deliberately to flout a condition imposed on a practising certificate was a very serious matter, the respondent did not deliberately flout such condition but while making attempts to comply he did not perhaps take sufficient steps to ensure that he had in fact complied with such conditions. Although a serious matter the Tribunal considered that no useful purpose would be served if the respondent were to be suspended from practice. On the understanding that the respondent would forthwith enter into partnership, such partnership having been approved by the Bureau, the Tribunal decided to impose a financial penalty and ordered the respondent to pay a fine of £2,500 furthering ordering him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court.

The Tribunal's Reasons

The Tribunal was most concerned to find that Mr King had appeared before them on two previous occasions. They accepted however, that the first matter referred to above took place in 1990 and that the second matter did not really have any relevance to the allegations before the Tribunal in December 1996. The Tribunal gave Mr King credit for accepting that his responsibility for the financial affairs of the firm was

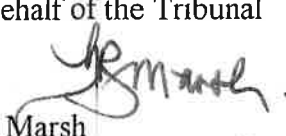
greater than that of ~~RESPONDENT 2~~ and that he alone had been responsible for the accounting procedures which had taken place in the sixty five probate matters to which reference had been made in the report of the Law Society's Investigation Accountant. The Tribunal did not accept the respondents' explanation regarding the operation of a computerised accounts system which had built into it a refusal to post a client account transaction that would give rise to an overdrawing. In the event of inadvertent overdrawing of client account any shortfall must be immediately replaced from the solicitor's own resources. A failure immediately to adopt that course of action meant that one client's funds were being used for the purposes of another and it followed from that that clients' funds were being placed in jeopardy. The entry of transfers from office to client account to allow overdrawn transactions to be posted on the computerised system without ensuring that identical transfers of cash were made between office and client account was totally contrary to the Rules and, of course, represented a false state of affairs.

The Tribunal was unable to avoid the conclusion that the transfers of monies from client to office account in relation to undelivered bills or written intimations in probate matters in the main where Mr King had been appointed sole executor, reflected a system of using clients' money to bolster the firm's office account. The Tribunal was supported in that view by Mr King's own admission that when too much money had been transferred and that was ascertained when final accounts were drawn, he had on occasions found it necessary to issue a credit note and transfer an appropriate sum from office to client account to enable the final distribution of the estate to be made. The Tribunal considered that Mr King had adopted a deliberate and cynical system of using clients' money for the purposes of his firm and thus for his own purposes. This was totally unacceptable and it did not show the integrity and probity required of a member of the solicitors' profession. Taking all those factors into account - and also Mr. King's two previous appearances before the Tribunal - the Tribunal ordered that Mr King be struck off the Roll of Solicitors and further ordered that he should pay the larger part of the fixed costs.

~~RESPONDENT 2~~ as a partner could not escape liability for the breaches of the Solicitors Accounts Rules. He was aware that there was a problem with the accounts and had appeared to be content to leave the resolution of that problem to others. Although he was a salaried partner with Mr King, he had been in practice as a solicitor for many years and was a man of considerable experience. His laissez faire attitude was totally unacceptable. The Tribunal recognised however that he was not personally responsible for the transfers from client to office account made by Mr King purportedly in respect of interim bills. The Tribunal considered it right to impose a fine of £1,500 upon ~~RESPONDENT 2~~ and ordered him to pay a smaller proportion of the fixed costs.

DATED this 29th day of January 1997

on behalf of the Tribunal


G B Marsh
Chairman

