

IN THE MATTER OF RAYMOND JOHN CHRISTOPHER McGRATH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the Chair)
Mr. D E Fordham
Lady Bonham Carter

Date Of Hearing: 16th January 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by David Rowland Swift solicitor of 19 Hamilton square, Birkenhead on the 7th August 1996 that Raymond John Christopher McGrath of Abergavenny, Gwent might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The applicant lodged a supplementary statement dated the 4th November 1996 containing further allegations.

The allegations set out below are those contained in both the original and supplementary statements.

The allegations were that the respondent 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 his own purposes;
- (v) misappropriated clients' funds;
- (vi) failed to comply with a professional Undertaking;
- (vii) further failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (viii) contrary to Rule 5 of the Solicitors Accounts Rules 1991 and/or the Solicitors Accounts (Legal Aid Temporary Provision) Rule 1992 failed to pay funds received in respect of undisbursed liabilities into a client account;
- (ix) contrary to Rule 8 of the Solicitors Accounts Rules 1991 further drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (x) further utilised clients' funds for his own purposes;
- (xi) delayed in complying with a professional undertaking.

The application was heard at the Court Room, 60 Carey Street, London, WC2 on the 16th January 1997 when David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the applicant and Steven J Morris solicitor and partner in the firm of Messrs. Patchel Davies solicitors of 183 High Street, Blackwood, Gwent appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent and exhibit RJCM 1, a bundle of documents handed in on behalf of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Raymond John Christopher McGrath of Abergavenny, Gwent, NP6 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 £2,487.15 inclusive.

The facts are set out in paragraphs 1 to 23 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 McGrath & Co. at 3 Victoria Street, Merthyr Tydfil, Mid Glamorgan. The Law Society had intervened into the respondent's practice. Shortly after the intervention the respondent had disposed of his practice to another local firm.
2. Upon due notice having been given, the Investigation Accountant of the Law Society carried out an inspection of the respondent's books of account on the 17th June 1996. The Investigation Accountant's Report dated the 19th June 1996 was before the Tribunal.

3. The applicant had made additional allegations in a supplementary statement which related to the report of the Investigation Accountant of the Law Society, having made an inspection of the respondent's books on the 7th August 1995, his report, dated 1st September 1995 was also before the Tribunal.
4. The Tribunal dealt first with the matters revealed by the Investigation Accountant's Report dated the 1st September 1995.
5. The respondent had practised alone since the 1st November 1990 and had conducted a general practice assisted by a staff of eight including an assistant solicitor.
6. The books of account were not in compliance with the Solicitors Accounts Rules 1991.
7. A list of liabilities to clients as at the 31st July 1995 was produced for inspection. The items were in agreement with the balances shown in the clients' ledger however the respondent agreed that further liabilities to clients totalling £7,782.00 existed which were not shown by the books. A comparison of the total liabilities to clients including the liabilities not shown by the books with cash held on client bank and building society accounts, after allowance for uncleared items, revealed the following position:-

| | |
|---|-------------------|
| Liabilities to clients per the books | £106,579.10 |
| Liabilities to clients not shown by the books | <u>7,782.00</u> |
| Total liabilities to clients | 114,361.10 |
| Cash available | <u>106,579.10</u> |
| Cash shortage | <u>£7,782.00</u> |

8. The cash shortage arose because legal aid monies in respect of unpaid professional disbursements amounting to £6,462.00 had been incorrectly retained in office bank account (contrary to the Solicitors Accounts Legal Aid Temporary Provisions 1992) and unpaid stamp duty of £1,320.00 had been incorrectly held in office bank account. The respondent rectified the shortage during the course of the inspection by a transfer of £1,320.00 from office to client bank account and the lodgement of £6,462.00 in client bank account from his personal resources. The legal aid "BACS" payment received in June 1992 had been credited to the respondent's office account at the time when he was over his authorised borrowing limit. The respondent had been unable to write a cheque from the office bank account as he did not believe the cheque would be honoured. The cheque had been raised on two subsequent occasions but the respondent stated that neither cheque had actually been sent out and eventually they were written back by the bookkeeper when out of date. The disbursement was eventually paid on the 21st August 1995. The shortage, was, however in existence for in excess of three years.
9. On the 4th March 1992 a bill of costs totalling £15,685.67 was raised in respect of a client who had purchased a company and in connection with various other matters. The bill included stamp duty of £1,320.00. The whole sum was paid either by way of transfers from client to office bank account or by payments into office bank account. The respondent agreed that the stamp duty was incorrectly held in office bank account and he told the Investigation Accountant that he had intended to pay it as soon as

possible. His bank borrowings had prevented him from doing so. The stamp duty had been transferred from office to client bank account on the 21st August 1995 but the shortage had been in existence in excess of three years.

10. The second Investigation Accountant's Report which was dated the 19th June 1996 revealed the following position.
11. The respondent's books of account were not in compliance with the Solicitors Accounts Rules as they contained false entries made at the instigation of the respondent. In view of that the Investigation Accountant was unable to express an opinion as to the liabilities to clients. He calculated however that a minimum cash shortage of £110,205.00 existed on client bank account as at 31st May 1996. The respondent indicated that he believed he would be able to rectify the cash shortage within the ensuing three weeks but he was unable to do immediately.
12. The Investigation Accountant reported that the minimum cash shortage had arisen in the following way:-

| | | |
|------|------------------------------|--------------------|
| (i) | Misuse of clients' funds | £83,205.00 |
| (ii) | Payment of a personal nature | <u>27,000.00</u> |
| | | <u>£110,205.00</u> |
13. On the 22nd November client bank account was charged with £83,205.00 in respect of a payment to Messrs. Holmes Campbell, solicitors. The payment was charged to an account in the clients' ledger headed V.T. when it showed a credit balance of only £50.00 resulting in an apparent debit balance of £83,205.00 at that date.
14. On 29th November 1995 the ledger account was credited with a lodgement in client bank account of £108,767.12 which had the effect of eliminating the debit balance. The respondent admitted that the original payment of £83,205.00 had been made in order to satisfy an unconditional undertaking given by him on 16th May 1995 on behalf of unconnected clients.
15. The respondent told the Investigation Accountant that the sum of £108,767.12 was received on behalf of Mrs P.M. another unconnected client, and that he had falsified entries in the books in order to conceal the shortage of £83,205.00 which had arisen on the V.T. ledger account.
16. The respondent admitted that, in order to conceal his misuse of Mrs P.M.W.S.'s funds, he had on 18th December 1995, instigated transfers into TSB client bank account from two client designated deposit accounts relating to the estate of deceased persons in the sums of £48,000 and £42,000. The respondent admitted that he had caused false entries to be made in the books to conceal the misuse of the estate funds. On 30th November 1995 the client ledger account in the name of VT was charged with £27,000 in respect of a transfer to a ledger account in the name of R Ltd. On the same date, the account of R Ltd was charged with a transfer of the same amount to the credit of a ledger account in the name of Mrs YG.

17. The respondent said that R Ltd was an offshore company he had set up some years previously which had never traded. He explained that the transfer was, in effect, to be a loan to him from his client SML to enable him to complete the purchase of a property on behalf of his wife.
18. No funds were held in client bank account on behalf of SML and consequently the transfer of £27,000 was improper.
19. The £27,000 was utilised by the respondent on 30th November 1995 when he purchased a property at Walton on Thames on behalf of his wife, who had herself contributed towards the purchase price.
20. The respondent had failed to comply with an unconditional undertaking given on 8th June 1995. The undertaking provided for the repayment of the sum of £20,000 together with interest at 6% per calendar month and reasonable costs.
21. Payment became due in December 1995 at which time the sum payable would have been £27,200 plus costs. The total payable as at 18th June 1996 was in excess of £30,000. The respondent had been in correspondence in relation thereto with the Office for the Supervision of Solicitors.
22. The two undischarged undertakings had been given by the respondent in consideration of two loans made to clients. The two clients concerned had been introduced by other good clients of the respondent and he had accepted their assurances that moneys would be readily available to repay the loans and achieve a discharge of the undertakings. The moneys had not been made available.
23. The respondent had expected moneys to have been available following the sale of a property in Portugal owned jointly by the respondent and his wife and another couple to provide funds for the purchase of the Walton on Thames property and to discharge the loan taken.

The Submissions of the Applicant

24. Following the first visit by the Investigation Accountant of the Law Society the respondent had confirmed that he was not able to deal with the disbursements which had wrongly been paid into office account because he had difficulties with his bank overdraft.
25. Following the second report of the Investigation Accountant, an intervention into the respondent's practice was ordered some three days later.
26. The second report revealed a minimum cash shortage of £110,205 on client account. The respondent had deliberately misused clients' funds and had deliberately made false entries in his books of account. Where the respondent had drawn money from client account leading to a debit balance, he had disguised the position by using funds belonging to another unconnected client. It was indisputable that a substantial sum of money had been moved across having been removed from the accounts of two estates in which the respondent had conduct of the administration. The balancing credit which

resulted on the original overdrawn account was used towards the purchase of a house for the respondent's wife.

The Submissions of the Respondent

27. The respondent admitted the allegations and told the Tribunal that he had appeared before it on an earlier occasion in 1993. The respondent had entered sole practice in 1980. By 1989 his practice had flourished. It was submitted that the respondent had made two errors of judgment. The first when he formed a partnership with another solicitor at the beginning of 1990 which had proved disastrous. Both practices had substantial liabilities. The income derived from the respondent's own sole practice had been sufficient to service his liabilities. The joint liabilities of the two partners were not however serviced by the fee income. The respondent's partner gave notice of dissolution. The staff of the partnership remained with the other partner and the respondent was left to take away only a handful of clients. He retained, of course, his same liabilities but his income was cut by about two thirds.
28. The second error of judgment occurred early in the summer of 1995. Two new clients were introduced to the respondent who were putting together various substantial transactions. The respondent was requested to give two undertakings relating to loans obtained to finance substantial projects. The respondent appeared to behave in a way that was both naive and reckless. He had however when he gave the undertakings made substantial enquiry to understand that the monies would become available to enable the undertakings to be met. He had been provided with documents indicating that would be the case and also received personal assurances from long established clients one of whom confirmed that he himself would meet the liabilities if any difficulty arose.
29. The respondent had been persuaded to adopt the course of action which he did being concerned with the considerable financial liabilities of the practice and the prospect of his receiving a fee and future work when the various projects came to fruition.
30. It transpired that the monies had not become available to discharge the undertakings. The respondent had however pursued matters most diligently in an endeavour to resolve the position. Promises to pay monies to the respondent had been repeated but broken.
31. The matter of the purchase of Mrs McGrath's house was entirely separate. The respondent and his wife suffered matrimonial difficulties in 1994 and 1995 and Mrs McGrath left to live in England together with the couple's teenage daughter. She instructed her solicitors to commence divorce proceedings. She had been wholly unaware of the respondent's financial difficulties.
32. The respondent and his wife's home was charged to the bank. It soon became clear that only asset available was a property in Portugal owned jointly by the respondent and his wife with another couple. It was agreed that the flat be sold and that the lawyer instructed in Portugal to deal with that matter should remit the proceeds of sale to the respondent's firm. It was intended that some of that money be used by the respondent's wife to assist with her purchase. The respondent utilised some of the

finds from Portugal to run his practice. He later made a transfer of funds to enable his estranged wife to buy her property. The divorce had become absolute but the respondent's former wife remained unaware of the facts behind the provision of the money towards the purchase of her property.

33. The Law Society had resolved to intervene into the respondent's practice and he had co-operated fully in that. He provided statements and documents and up to date computer records.
34. The respondent had been in practice for some twenty five years at the time of the intervention. He had been able to dispose of his practice. He received only a small payment for fixtures and fittings and negotiated a share of his fees on current files. The fees to which the respondent would be entitled would be applied in the reduction of the shortfall on client account and it was hoped that a very substantial proportion of that shortfall would be recovered.
35. A bundle of testimonials was placed before the Tribunal all of whom spoke highly of the respondent's integrity and ability as a solicitor.
36. The brother of the one of the clients in respect of whom the undertakings had been given had expressed concern as to what had happened and had offered the respondent employment in his business. The respondent would, of course, derive an income from that business a proportion of which could also be used to reduce the shortfall on client account.
37. The respondent who would be fifty two years of age later in the year had practised law as his only career. He appreciated the likely consequences of the conclusion of the disciplinary proceedings. He hoped however he might be able to return to practice in the future.
38. The respondent had co-operated with the Law Society and those instructed by the Law Society in every way possible. He had come to the Tribunal to face the allegations which he found both shaming and embarrassing. He had been jealous of his former good reputation which had been lost causing disgrace to the respondent his colleagues and his family.
39. The respondent had been divorced from his wife and was about to face the sale of his home, in which there was no equity, and would have to move to rented accommodation.

The Findings of the Tribunal

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. On the 21st December 1993 the Tribunal found the following allegations to have been substantiated. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that he had:-

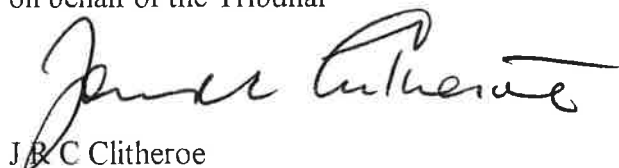
- (i) failed to reconcile the clients' cash book with bank pass sheets contrary to Rule of the Solicitors Accounts Rules 1986;
- (ii) delivered his Accountant's report late notwithstanding section 34 of the Solicitors Act 1974 and the rules made thereunder;
- (iii) contrary to Rule 5 of the Solicitors Accounts Rules 1992 failed to pay funds received from clients in respect of undisbursed liabilities into client account in respect of undisbursed liabilities into client account;
- (iv) contrary to Rule 8 of the Solicitors Accounts Rules 1986 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
- (v) utilised clients' funds for the purposes of other clients;
- (vi) utilised clients' funds for his own purposes.

On that occasion the Tribunal accepted that the accounting discrepancies arose from negligence and muddle and not from dishonesty. No clients' funds had been placed in jeopardy. The Tribunal said that any breach of the Solicitors Accounts Rules was a serious matter but were pleased to note that all matters had been put right and the respondent had put his house in order. The respondent was ordered to pay a fine of £2,500 and costs.

In the matter before the Tribunal on the 16th January 1997 a rather different picture had arisen. The Tribunal recognised that the respondent was under pressure both financially and in his private life. There was no doubt that he had made considerable errors of judgement both in partnership matters and in trusting clients to put him in funds to enable him to discharge unconditional professional undertakings. The Tribunal took note of the excellent written testimonials placed before them in support of the respondent all of which spoke highly of his competence and trustworthiness as a solicitor. The Tribunal also recognise that the respondent had co-operated fully with the Law Society in connection both with its investigation, the intervention and the disciplinary proceedings. The Tribunal could not, however, overlook the serious breaches of the Solicitors Accounts Rules, the improper utilisation of clients' funds and the breaches of Undertaking. It was right that the respondent be struck off the Roll of Solicitors. The Tribunal made that order and ordered that he pay costs in a fixed sum to include the costs of the Investigation Accountant of the Office for the Supervision of Solicitors.

DATED this 10th day of February 1997

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

