

IN THE MATTER OF JOHN ANDREW ESLING, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J.N. Barnecutt (in the Chair)

Mrs. C. Stanley

Mr. M.C. Baughan

Date Of Hearing: 8th May 1997

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## FINDINGS

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

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An application was duly made on behalf of the Office for the Supervision of Solicitors by Andrew Christopher Graham Hopper of P.O. Box 7, Pontyclun, Mid Glamorgan on 21st October 1996 that John Andrew Esling, solicitor of Harbour House, Town Quay, Southampton 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 applicant made a supplementary statement on 11th April 1997 containing further allegations. The allegations set out below are those contained in the original and supplementary statements.

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

- (i) failed to deliver an Accountant's Report pursuant to the provisions of Section 34 of the Solicitors Act 1974 and the Rules made thereunder;

- (ii) failed to comply with the Solicitors Accounts Rules 1991 in that he failed to produce his books of account and other relevant records for inspection contrary to Rule 27(2) of the said Rules;
- (iii) failed to comply with the said Rules in that he failed to keep his books of account properly written up, notwithstanding Rule 11(1) of the said Rules;
- (iv) been guilty of conduct unbecoming a solicitor in that he attempted to draw money from client account other than as permitted by the said Rules in payment of a personal liability.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 8th May 1997 when Andrew Christopher Graham Hopper, solicitor of P.O. Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent did not appear and was not represented.

Upon representations made to it, the Tribunal accepted that the papers had been duly served upon the respondent. The evidence included exhibit "JAE 1", a bundle of copy correspondence and notices.

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Andrew Esling of Whadon, Wilts (formerly of Harbour House, Town Quay, Southampton) solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 8th May 1997 and they further ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £1,318.65.

The facts are set out in paragraphs 1 to 9 hereunder.

1. The respondent, born in 1955, was admitted a solicitor in 1990. At the material times he carried on practice on his own account at Harbour House, Town Quay, Southampton where he conducted a mainly non-contentious marine practice.
2. The respondent was due to provide his first Accountant's Report for the period ending 30th April 1995 by the 31st October 1995. He sought an extension of time which was granted to the 30th November 1995.
3. No Accountant's Report was received by the Law Society and the matter was referred to the Solicitors Complaints Bureau ("the Bureau") who wrote to the respondent on 19th February 1996 seeking his explanation. There was no reply.
4. On 1st April 1996 an officer of the Bureau wrote to the respondent with a copy of the Report intended to be submitted to the Conduct Sub-Committee. The respondent made no representations. On 5th June 1996 the Committee resolved to rebuke the respondent for his late delivery of an Accountant's Report and to require him to file the outstanding Report within twenty-eight days of being notified of the decision, failing which his conduct would be referred to the Tribunal without further notice. The respondent was notified of this by letter of 26th June 1996, but his Accountant's Report remained outstanding.

5. Upon due notice to the respondent an attempt was made to conduct a monitoring visit and examination of his books of account on the 3rd September 1996.
6. On 2nd September 1996, in a telephone call, the respondent informed the Compliance Monitoring officer scheduled to attend upon him, that he no longer practised, but still had control of a client account and the visit was rescheduled, at his request, to 5th September 1996 at the respondent's home address.
7. On 4th September 1996 the respondent again requested a postponement and, with his agreement, the 12th September 1996 was set as the revised date. The respondent failed to appear on that date rendering an inspection of accounts impossible.
8. Following due notice to the respondent, an Investigation Accountant of the Office for the Supervision of Solicitors ("the Office") (which superseded the Bureau) attempted to commence an inspection on the 4th November 1996. The respondent failed to produce any accounting records, although he promised to forward copies of available records to the Office within ten days. None was received.
9. The Investigation Accountant reported that the respondent's client account was charged with a cheque payment of £4,044.80. It was not cleared as there were insufficient funds in the account. Upon representation the cheque again failed to clear and was returned. The respondent explained that the payment had been in respect of school fees, but he had used the wrong cheque book in error.

#### **The submissions of the applicant**

10. It was acknowledged that the delay in the filing of the accountant's report ran only from the date of the rebuke of the respondent on the 5th June 1996.
11. The respondent had not produced books of account to the Investigation Accountant, not even primary records such as cheque book stubs.
12. The respondent asserted that a cheque for school fees was drawn on client account in error but in the submission of the applicant it was difficult to understand how such an error could have taken place allowing for the fact that at the material time the respondent was about to cease practice and clearly was handling very little professional business.
13. It appeared that the respondent had come late to the law previously having had a naval background. His practice was very small and he employed no staff. The Law Society had intervened into the respondent's practice and had sent a member of its staff to collect the remnants of the respondent's practice. There had been no client files and all that remained was contained in two cardboard boxes. It appeared that the respondent's practice as a solicitor had never become established. It was understood that the respondent was now pursuing a career unconnected with the law.
14. The respondent made no submissions.

**The Tribunal's Findings**

The Tribunal FOUND all of the allegations to have been substantiated. The respondent appeared to have put himself in an extraordinary position. He had apparently indicated to the Law Society that he was practising as a solicitor, had failed to comply with essential regulatory requirements and, indeed, had apparently ignored matters of fundamental importance such as the Solicitors Accounts Rules. The Tribunal considered it right that the respondent should not be permitted to practise until he had put his house in order and had convinced the Tribunal that he was properly aware of the burdens relating to practice which fall upon the shoulders of solicitors. The Tribunal suspended the respondent from practice for an indefinite period and ordered him to pay costs in a fixed sum.

DATED this 15th day of July 1997

on behalf of the Tribunal



J N Barneclutt  
Chairman

Findings filed with the  
Law Society on the 23rd  
day of July 1997