

IN THE MATTER OF MARK COLIN EAST, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R B Bamford (in the Chair)
Mr. D W Faull
Mrs. C Pickering

+Date Of Hearing: 15th April 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 Andrew Christopher Graham Hopper, solicitor, of PO Box 7, Pontyclun Mid Glamorgan, CF7 9XN on the 21st October 1996 that Mark Colin East of Holton le Clay, Near Grimsby, Lincolnshire 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:

- (i) failed to comply with the Solicitors Accounts Rules 1991 in that he drew money from client account other than as permitted by Rule 7 and contrary to Rule 8 of the said Rules;
- (ii) been guilty of conduct unbefitting a solicitor in that he misappropriated for his own purposes money belonging to clients and/or his employers.

(At the opening of the hearing the applicant accepted that allegation (i) related to monies held in client account which was money which either belonged absolutely to the firm employing the respondent in that they related to costs due or the firm could have been absolutely entitled thereto by the delivery of a bill.)

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 15th April 1997 when Andrew Christopher Graham Hopper, solicitor of PO Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and the respondent was represented by Louise Godfrey of Queen's Counsel instructed by John Robinson & Co. solicitors of Wyke Chambers, 7 Silver Street, Hull.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Mark Colin East of Holton le Clay, Near Grimsby, Lincolnshire, DN36 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 £3,994.12.

Upon the application of the respondent the Tribunal agreed that filing of the Order with the Law Society might be suspended for the period of 14 days after the filing of the Findings in view of the respondent's indicated intention to appeal the decision of the Tribunal to the Divisional Court.

The facts are set out in paragraph's 1 to 8 hereunder.

1. The respondent, born in 1965, was admitted a solicitor in 1991. At the material times he was employed by Beetenson & Gibbon (the firm) of Grimsby initially as an assistant solicitor and later as a salaried partner.
2. An Investigation Accountant of the Law Society attended at the offices of the firm on the 12th January 1996. Her report was dated the 29th January 1996 and was before the Tribunal.
3. The report revealed that the respondent joined the firm in September 1989 and had become a salaried partner on the 28th April 1989. He had unexpectedly handed in his resignation during October 1995 following which the firm discovered that since mid -1992 the respondent had on many occasions made improper transfers from client bank account into his personal bank and building society accounts. The respondent was dismissed from the practice and the partners informed the Solicitors Complaints Bureau of their discovery.
4. The Investigation Accountant interviewed the respondent on the 18th January 1996 when he admitted that he had instigated improper personal withdrawals from client bank account to a minimum of £17,764.88. The partners in the firm had rectified the shortage.
5. Between the 15th June 1992 and the 28th November 1995 a minimum of forty one improper withdrawals varying in amount between £72 and £1,014.37 and totalling £17,764.88 had been made at the respondent's instigation from funds held in client

bank account in respect of the firm's costs. The largest sum transferred related to a client, Mr B, of whose affairs the respondent had conduct in connection with litigation.

6. On the 23rd April 1992 the relevant account in the clients' ledger was credited with £2,561.53 received from an insurance company and lodged in client bank account which included £1,624.76 in respect of the firm's costs.
7. The respondent had agreed with the Investigation Accountant that on the 14th January 1993 and the 24th February 1993 he had instigated two payments from the client bank account which he caused to be charged to the Mr B client ledger account. The payments of £375.39 and £1014.37 were made to National Westminster Bank and Halifax Building Society respectively. The respondent confirmed to the Investigation Accountant that the National Westminster Bank was his own personal account and the Halifax Building Society was his brother's account and that both payments had been made improperly for his personal benefit.
8. Subsequently the total sum taken by the respondent had been identified as £19,718.92.

The Submissions of the Applicant

9. The respondent had taken a large sum of money from his employers by taking a number of smaller amounts time after time over a period of many years.
10. The respondent had supplied a number of written references speaking of his competence and efficiency as a solicitor. None of that was in issue before the Tribunal.
11. A psychiatric report had been filed on behalf of the respondent. The applicant told the Tribunal that he had not been invited to agree it and if he had been so invited he would not have done so. He believed that the content of the report went further than the expression of the views than might properly be expected of a psychiatrist.
12. The report drew attention to the circular nature of the respondent's mitigation. Was his psychiatric state the result of his actions - and his actions were said to be the result of his mental condition.
13. The respondent described his heavy caseload. He drove himself to work very hard and to that extent subjected himself to self-imposed stress. It was accepted that was entirely for the benefit of the firm and its clients. It appeared that the firm had asked him not to work so hard. The psychiatrist in his report describes the respondent as being driven by his guilt and it was suggested in that report that the excessive amount of work undertaken by the respondent was to assuage his own guilt. In the submission of the applicant the Tribunal would recognise the stress. Stress was inevitable in the circumstances in which the respondent found himself but there was no clear evidence before the Tribunal that the stress to which the respondent had been subjected existed prior to his unfortunate course of action. It appeared however that the respondent's stress did not begin until after he began to take money from his employers.

14. The respondent's case was that he utilised the money to pay a blackmailer. In such circumstances corroborative evidence would not have been expected. The suggestion that the respondent had not been well paid was not accepted by the partners of the firm.
15. The applicant's concern was that the respondent's decision to take money from his employers appeared to have been his first and only response to blackmail. There were many other reactions which he might have had, the most obvious of which was to take advice.
16. The respondent's unfortunate reaction to blackmail was first and foremost to take money from the firm. The Tribunal was invited to consider the respondent's action to be at the highest of any scale of professional misconduct.

The Submissions of the Respondent

17. The respondent was thirty one years of age. He had been greatly supported by other solicitors, clients and persons connected with the court, including a stipendary magistrate. The written testimonials were before the Tribunal and spoke highly of the respondent's competence and efficiency and were fulsome in his praise making it clear that he always "went the extra mile" for his clients.
18. The respondent carried an enormous workload he worked extremely long hours and carried out his work extremely well and entirely without any complaint from any quarter.
19. The respondent had split up from his fiancée in January 1991. They had bought a house together. The respondent wished to keep it causing him to be financially stretched.
20. The respondent described himself as having been short of friends but had played football and visited a local public house after playing a match and thereafter became friendly with a group of people.
21. Towards the middle of 1992 the respondent went into Cleethorpes with a group of friends to a night club. He said he had a great deal to drink which was unusual for him and met a girl through the group and slept with her. A couple of weeks later a member of the group approached the respondent and told him that the girl was under sixteen years of age and proposed to tell the police what had happened.
22. At first the respondent thought the matter was a joke, but for some stupid reason which he remained unable to understand he panicked, imagining the lascivious attention of the press.
23. The member of the group who approached the respondent suggested that the girl might be paid to keep her quiet. The respondent hadn't known what to do and in the state that he was in, he agreed. He was ashamed. He had been brought up with strict moral values and felt unable to speak to anyone about the problem.

24. In about May or June 1992 he started a two and a half year saga of paying money. There had not been any set amount and only cash changed hands. It was paid either by withdrawals from the respondent's bank account or from petrol money paid to him by the firm. He was approached by the member of the group with the requests for money in varying amounts from time to time irregularly when the respondent was in a public place.
25. The respondent was upset and nervous. He remained on a relatively low salary and had to repay his brother for monies borrowed to purchase his fiancée's interest in their house. He began to make payments from the firm into his bank, mortgage account or credit cards as he simply did not have enough money to pay all of his bills and pay the blackmailer as well.
26. The respondent continued to feel unable to discuss the matter with anybody. He did have a conscience about what he was doing and began to suffer from sleeplessness, irritability and headaches. He made two visits to his general practitioner during June 1992 complaining of stress and headaches. Despite visits to his general practitioner, the respondent had prescribed medication for himself which was not appropriate or helpful, and, indeed might well have exacerbated his health problems.
27. The respondent had not utilised the money taken to sustain an extravagant lifestyle.
28. The blackmailer's approaches for money ceased in January 1995.
29. Also in January 1995 the respondent had met a girl who moved in with him, which the respondent regarded as an entirely satisfactory state of affairs. He later discovered that she had not been making agreed contributions to their joint outgoings and debts over £4,000 had accumulated. He asked the girlfriend to leave. He withdrew monies belonging to the firm to help him out of the terrible mess in which he then found himself.
30. About a month later the respondent decided he could not continue and it would be best if he left the firm and moved away from the area to make a fresh start. He handed in his resignation.
31. The respondent found a job in Sheffield with his best friend's firm, found a new girlfriend and bought a house.
32. At the end of November 1995 the respondent's father died in stressful circumstances and the firm discovered the respondent's earlier defalcations. He fully admitted his actions and thereafter lost the new job in Sheffield and the relationships both with his best friend and his new girlfriend.
33. The respondent lost nearly two stones in weight, wasn't sleeping and became very stressed. His general practitioner referred him to a clinical psychologist. At the time of the hearing he continued to have treatment.
34. The monies due to the firm had been repaid in full.

35. On behalf of the respondent the Tribunal was invited to give him credit for the fact that he had openly admitted what he had done and co-operated fully in the investigation. He had not sought to conceal anything which had happened and all matters were before the Tribunal - they were not only the tip of an iceberg.
36. The Tribunal was invited to take the view that the sum of money involved was relatively small compared with the vast sums concerning mortgage and trust frauds which from time to time were dealt with by the Tribunal.
37. The respondent had used the whole of his inheritance from his late father to pay back the monies to the firm and it had caused him much pain and shame that his late father's hard earned money had been used for such a purpose. In so doing the respondent had not avoided his responsibility.
38. The respondent had suffered self disgust shame and remorse. He had suffered a loss of self esteem and had entirely accepted his rejection by his friends. He suffered great feelings of guilt.
39. The respondent had not taken clients' money. No client had suffered loss nor had clients' money been placed in jeopardy. The respondent had not sought to cover his tracks by paying the monies of one client into the account of another. No distress anguish or uncertainty had been caused to any members of the public. That being so, it could not be said that there had been any damage to the reputation of the firm or the solicitors' profession. The respondent specialised in representing clients in criminal matters. He was extremely conscientious and worked always in the best interests of his clients to whom he gave an exceptional service. He held himself available at all times. He had pushed himself to the limits but there had been no complaints about the standard of his work only, indeed, congratulations.
40. The respondent's Practising Certificate had been renewed and he had been given employment by Mr Robinson of Hull. The respondent had responded to that opportunity and had been pleased to take it.
41. Mr Robinson spoke on behalf of the respondent at the hearing. He had employed the respondent being fully aware of his background. He told the Tribunal that the respondent got on very well with clients. He worked unsociable hours in a demanding and tiring job. He continued always to give the best of himself for his clients who respected him and had confidence in him. The respondent's dedication to his work and his clients had become unusual within the profession. He was popular with members of Mr Robinson's staff.
42. The Tribunal was invited to not impose the ultimate sanction upon the respondent in view of the strong mitigation, his great remorse and the fact that he had taken steps to put matters right. The Tribunal was urged to impose either a period of suspension or a fine upon the respondent.

The Findings of the Tribunal

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested. The Tribunal took note of the fact that the respondent had not taken monies that were held on behalf of or in trust for or which was due to clients. The Tribunal could not fail but be impressed by the excellent written testimonials from a wide cross section of people which had been submitted on his behalf.

The fact that Mr Robinson, the respondent's current employer, was prepared to travel from Hull to London to support the respondent, which he did in glowing terms, was not to be underestimated and the Tribunal was grateful to Mr Robinson for his assistance.

The Tribunal was in no doubt that the respondent, a young man, was a competent and efficient solicitor strenuously doing the best for his clients. It had been suggested that the respondent lacked a degree of maturity which was his downfall when confronted with a blackmailer. Whilst the Tribunal have every sympathy for him in finding himself in such an unfortunate position, they are surprised that the respondent who was experienced in the practice of criminal law did not seek advice from an appropriate quarter. The Tribunal does not, of course, underestimate the dismay and anxiety felt by the respondent, but no amount of dismay or anxiety could serve to exculpate a solicitor who has been guilty of improperly taking money belonging to somebody else.

Although the respondent did not attempt to conceal his actions, he arranged for monies which did not belong to him to be paid to him or to be paid at his direction to others in settlement of his own debts. Such action did not reflect the honesty integrity and probity required of a member of the solicitors' profession. It is the Tribunal's view that such action tarnished the good reputation of the solicitors' profession and could not be overlooked.

The Tribunal ordered that the respondent be Struck Of the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry.

DATED this 5th day of June 1997

on behalf of the Tribunal



R B Bamford
Chairman

Findings filed with the
Law Society on the 19th
day of December 1997.