

IN THE MATTER OF MARK CHARLES SUTTON-BOWYER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr. A.G. Ground (in the Chair)  
Mr. R.B. Bamford  
Mrs. C. Pickering

Date Of Hearing: 1st May 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 Peter Harland Cadman, solicitor of 2 Putney Hill, Putney, London SW1 on 18th December 1996 that Mark Charles Sutton-Bowyer, solicitor of Penn, Wolverhampton 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 particulars, namely that he had -

- (a) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors' Accounts Rules 1991;
- (b) contrary to Rule 8 of the Solicitors' Accounts Rules 1991 drawn money out of client account other than permitted by Rule 7 of the said Rules;
- (c) utilised clients' funds for the purposes of other clients;

- (d) utilised clients' funds for his own purposes;
- (e) administered an oath in proceedings in which his firm was acting.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 1st May 1996 when Peter Harland Cadman, solicitor and partner in the firm of Messrs. Russell-Cooke, Potter & Chapman of 2 Putney Hill, Putney, London SW15 6AB appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the respondent contained in a letter addressed to the applicant on 20th January 1997 and a letter addressed by the respondent to the applicant dated 19th March 1997. The applicant told the Tribunal that those letters had been in manuscript but had been very difficult to read. He placed before the Tribunal typed copies regretting that there were omissions where the respondent's writing was illegible and there was no certainty that other words that had proved difficult to read in fact had been correctly transcribed. Those letters were put in as exhibit "MCS-B 1".

At the conclusion of the hearing the Tribunal ORDERED that the respondent Mark Charles Sutton-Bowyer, solicitor of Penn, Wolverhampton be suspended from practice as a solicitor for an indefinite period to commence on the 1st May 1997 and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £2,916.16 to include the costs of the Investigation Accountant of the Law Society.

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

1. The respondent, born in 1950, was admitted a solicitor in 1975. At the material times he practised on his own account under the style of Sutton-Bowyer & Co. at Suite 9 and 9A, First Floor, 57 Victoria Street, Wolverhampton. On 25th September 1996 the Law Society decided to intervene into the respondent's practice.
2. Upon due notice to the respondent, the Investigation Accountant of the Law Society carried out an inspection of his books of account. He produced a Report dated 28th May 1996 a copy of which was before the Tribunal.
3. The Investigation Accountant's Report revealed that the respondent had practised alone since 1988, conducting a mainly conveyancing based practice assisted by an unadmitted staff of four. The respondent's books of account did not comply with the Solicitors' Accounts Rules. A list of liabilities to clients as at 29th February 1996 was produced for inspection and totalled, after adjustment, £9,525.68. The items were in agreement with the balances shown in the clients' ledger, but they did not include further liabilities amounting to £3,302.25. The position was as follows -

Liabilities to clients per the books	£9,525.68
Liabilities not shown by the books	<u>3,302.25</u>
	£12,827.93
Cash available	<u>9,215.60</u>
Cash shortage	<u>£ 3,612.33</u>

4. The shortage was made up of debit balances of £310.08 and improper transfers from client to office bank account totalling £3,302.25. Transfers had been made from client to office bank account in respect of 155 separate disbursements varying in amount from £5 to £50 and totalling £3,302.25 where there was no evidence that payment of those amounts had been made to the relevant parties.
5. The Investigation Accountant set out as an example the matter of Mr. G for whom the respondent had acted in a residential conveyancing transaction. The relevant account in the clients' ledger had been debited, inter alia, with the following amounts purporting to be in respect of disbursements incurred in the conduct of the matter -

4/7/95	Bank clearance on deposit	£15.00
4/8/95	Mortgagees redemption fee	30.00
4/8/95	Limestone search	23.00
4/8/95	Bank transfer fee	25.00
4/8/95	Office copies	16.00
4/8/95	Bank clearance	25.00
8/8/95	Mortgagees bank fees	30.00
8/8/95	Extra limestone search	23.50
8/8/95	Bank fee on completion	25.00
18/8/95	Mortgagees bank fee re Miller	35.00
18/8/95	Mortgagees fees on redemption	25.00
18/8/95	Mortgagees fee on redemption - Miller	20.00
24/8/95	Extra limestone search	23.00
24/8/95	Extra mortgagees redemption fee	30.00
24/8/95	Bank clearance fee on retention	25.00
7/9/95	Bank clearance fee on retention	25.00
7/9/95	Land fill search	23.00
7/9/95	Index map search	<u>5.00</u>
		<u>£423.50</u>

6. A review of the relevant client matter file, together with the accounting records, produced no evidence to show that the above amounts had been paid to the relevant parties, nor were those items included on the completion statement.
7. The respondent agreed the existence of the cash shortage in respect of the debit balances and rectified that part of the shortage by two separate transfers from office to client bank account on 1st and 4th March 1996.
8. The respondent declined to comment upon the improper transfers pending his own investigation into the matters concerned.
9. Messrs. Higgs & Sons of Brierley Hill, West Midlands complained to the Office for the Supervision of Solicitors ("the Office") on 16th September 1996 that the respondent had administered two Oaths for Administrators relating to two estates in matters where he was acting for the two administrators contrary to the provisions of Section 81(2) of the Solicitors' Act 1974.

**The submissions of the applicant**

10. The Law Society intervened into the respondent's practice and the applicant was unable to assist the Tribunal as to the respondent's current employment.
11. The respondent's letters had been less than clear. He had made certain admissions, but again, the full extent of those admissions was not entirely clear.
12. Clearly, the respondent had been guilty of breaches of the Solicitors' Accounts Rules and had administered oaths in proceedings in which his firm was acting.

**The submissions of the respondent (a resume of the respondent's two letters in exhibit "MCS-B 1")**

13. The respondent said he did not totally admit allegation (a) as he employed two qualified book-keepers at the practice to write up the books of account. The majority of his accountant's certificates were clear and unqualified.
14. The respondent did not totally admit allegation (b) as properly written detailed invoices and bills were drawn up in each client matter to cover drawings from client account.
15. Some of the temporary shortage on client account had been met. The majority of matters referred to in the Accountant's Report were conveyancing matters and it appeared that the bank had charged the practice and such sums were chargeable to clients.
16. Certain funds had been repaid to relevant client accounts from office account or the respondent's personal funds. In the submission of the respondent the shortfall had been reduced to £2,000.
17. The respondent did not admit allegation (c) saying that he had no knowledge of such matters. He did not admit allegation (d) and had the recollection of repaying some clients' temporary shortfall from his own personal funds.
18. The respondent admitted only part of allegation (e) as all the probate papers in the lengthy probate matter in question had been sent to the local Probate Registry for settling and the Probate Registry approved all the oaths in question. When the point was raised that the respondent had apparently attested to an affidavit in a matter where he was acting for clients, he immediately apologised to the client for any inconvenience and refunded all commissioner's fees.
19. In the second of the respondent's letters he referred to payments into client account to reduce the shortfall which appeared to duplicate those in his earlier letter. He said he had already at the time of his letter, March 1997, replaced £833.

**The Findings of the Tribunal**

The Tribunal FOUND the allegations to have been substantiated. The Law Society had intervened into the respondent's practice and the Tribunal could only surmise that

he was no longer practising as a solicitor. The letters which the respondent wrote to the Law Society's solicitor indicated to the Tribunal that the respondent had failed to grasp his responsibilities as a practising solicitor. The Tribunal had not had the advantage of being able to consider any detailed explanation or any mitigation and in the circumstances the Tribunal considered it right to suspend the respondent from practice for an indefinite period of time making it plain that he could apply to the Tribunal for the period of suspension to be determined upon producing evidence that he was a fit and proper person again to act as a solicitor at which time one of the matters on which the Tribunal would require to be satisfied would be likely to include proof that the shortfall on the respondent's accounts had been discharged.

DATED this 18th day of June 1997

on behalf of the Tribunal



Chairman

