

IN THE MATTER OF KEVIN MICHAEL QUIGLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R B Bamford (in the Chair)
Mr. A G Ground
Dr. Z U Khan

Date Of Hearing: 20th June 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 SW15 on 13th February 1997 that Kevin Michael Quigley, solicitor of Darwen, Lancashire 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.

At the opening of the hearing the applicant sought the consent of the Tribunal to withdraw allegation (d). The Tribunal gave such consent.

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 5 of the Solicitors Accounts Rules 1991 failed to pay funds received from clients in respect of undisbursed liabilities into a client account;
- (c) contrary to Rule 8 of the Solicitors Accounts Rules 1991 drew money out of client account other than as permitted by Rule 7 of the said Rules;

- (d) Withdrawn;
- (e) utilised clients' funds for his own purposes;
- (f) misappropriated clients' funds.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 20th June 1997 when Peter Harland Cadman, solicitor and partner in the firm of Messrs. Russell-Cooke Potter & Chapman of 2 Putney Hill, Putney, London SW15 appeared for the applicant and the respondent did not appear and was not represented.

The Tribunal had received telephoned and faxed communications from the respondent's wife. She indicated that he was suffering from severe illness. It was pointed out to her both by the Tribunal's office and by the applicant that the Tribunal would be likely to consider an adjournment of the matter only upon receipt of a detailed medical certificate which included a prognosis. No such medical evidence had been forthcoming. The applicant told the Tribunal that the respondent's wife had informed him during the course of a telephone conversation that the respondent would not answer the points raised and would not come to the telephone. It was understood that the disciplinary proceedings were not the only pressing matter for the respondent, but his mortgagee was in the process of re-possessing his house.

The Tribunal refused the application to adjourn and the matter went to a full hearing.

The evidence before the Tribunal included all matters which had been the subject of a Civil Evidence Act notice, and a notice served under the Tribunal's rules of procedure.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Kevin Michael Quigley, solicitor of _____ Darwen, Lancashire 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 £5,076.89 inclusive.

The facts are set out in paragraphs 1 to 12 hereunder.

1. The respondent, born in 1961, was admitted a solicitor in 1985. At the material times he practised on his own account under the style of The Quigley Partnership at 5 Atlas House, St. George's Square, All Saints Street, Bolton, Lancashire. The Law Society intervened into the respondent's practice in November 1996.
2. Upon due notice to the respondent, the Investigation Accountant of the Law Society carried out an inspection of his books of account. The Investigation Accountant's Report of 15th July 1996 was before the Tribunal and revealed that the books of account did not comply with the Solicitors Accounts Rules and there was a cash shortage of £32,171.32. The cash shortage was reduced to £28,690.78 by the payment of two amounts to two clients, totalling £3,480.54 from office bank account. The respondent said he would be unable to rectify the remaining shortage until the end of September 1996. In the main the shortage was caused between the 17th February 1995 and the 31st May 1996 when 202 amounts varying between £55.00 and £123.00 and totalling £27,359.33 were received in respect of professional disbursements and credited to the office bank account but not paid to the relevant professional whose fees they represented. Ten further unpaid disbursements had been credited to office bank account between 14th February 1996 and the 23rd May 1996.

3. The respondent wrote to the Solicitors Complaints Bureau on the 15th August 1996. The respondent said that his firm undertook mainly industrial disease related work, in the main relating to industrial deafness. The respondent's practice had dealt with a great many claims in respect of deafness. His predecessor practice had entered into an informal arrangement with a number of ear nose and throat specialists throughout the United Kingdom. Because there was a large volume of medical examinations required those consultants tended to waive payment of their fees until such time as the client's claim had actually settled, provided that the claims were settled within a reasonable time (12 months). As time passed two major employers found it increasingly difficult to maintain the guaranteed twelve month period because of the sheer number of claims for industrial deafness that were being lodged.
4. When the consultants required their fees to be paid on a different basis, for instance in a block and without their having to wait, the respondent's firm was put under considerable pressure. He anticipated being able to put matters right in the not too distance future.
5. On the 28th October 1996 a second Investigation Accountant's inspection of the respondent's books of account was carried out, his report dated the 30th October 1996 was before the Tribunal. The respondent's books of account still were not in compliance with the Solicitors Accounts Rules.
6. A list of liabilities to clients as at the 30th September 1996 was produced for inspection. The items on the list were in agreement with the balances shown on the clients ledger but the list did not include further minimum liabilities to clients of £6,891.03. A comparison of its total, including the additional minimum liabilities, with cash held on client bank account at that date after allowance for uncleared items revealed the following position:

Liabilities to clients per the books	£7,433.88
<u>Add Minimum liabilities Not shown by the books</u>	<u>6,891.03</u>
	14,324.91
Cash available	<u>1,502.88</u>
Minimum cash shortage	<u>£12,822.03</u>

The Minimum shortage was reduced by £931.00 by a client account receipt on the 8th October 1996. The respondent told the Investigation Accountant that he would replace £5,000 of the remaining shortage on the 31st October 1996 and he would replace the remaining amount of £6891.03 within twenty eight days. He would send proof of rectification to the Office for the Supervision of Solicitors.

7. The minimum cash shortage had arisen in the following way:
- | | |
|--|-------------------|
| (i) Unpaid professional disbursements | £6,891.03 |
| (ii) Improper, round-sum client to office transfer | 5,000.00 |
| (iii) Debit balance | <u>931.00</u> |
| | <u>£12,822.03</u> |

8. At the time of the earlier inspection the respondent had said that his failure to pay disbursements, being professional fees, and the resultant shortfall had arisen owing to his financial difficulties. He said he would give cheques to the professional persons

whose fees remained outstanding post-dated between the 28th June 1996 and the end of September 1996 to clear the shortage.

9. The Investigation Accountant reported that as at the 30th September 1996 a shortage of £6,891.03 still remained in respect of fifty four of the unpaid professional disbursements reported upon at the 31st May 1996. The respondent agreed with the Investigation Accountant that the shortage of £6,891.03 represented only a minimum amount as further sums had been received and credited to the office bank account since the 31st May 1996 in respect of further professional disbursements which had not yet been paid to the relevant professionals.
10. On the 15th August 1996 a round sum transfer of £5,000 was made from client to the overdrawn office bank account which was not allocated to any account in the clients ledger. The respondent told the Investigation Accountant that the transfer could not be allocated to any individual client matter and that it was "a stupid desperate act" by him as he had been "under pressure from the bank".
11. It was discovered during the inspection that a further shortage of £5,000 had existed on client bank account as at the 13th August 1996 following an improper round sum client account to officer account transfer on the 17th July 1996 of £3,000 and an unallocated client account payment on the 13th August 1996 of £2,000. The respondent said the round sum transfer of £3,000 had been made in the same circumstances at the £5,000 transfer on the 15th August 1996.
12. The sum of £2,000 was explained by the respondent as payment made by him to National Westminster Bank which had been the banker for his previous partnership. He confirmed that the payment was in respect of an office debt and had no connection with any client matter.

The Submissions of the Applicant

13. In the submission of the applicant the respondent had been guilty of dishonest misappropriation of clients' funds revealed in the second Investigation Accountant's report. He had admitted that he had transferred clients' money following pressure from his bankers.

There were no submissions from the respondent

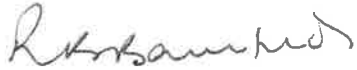
The Tribunal's Findings

The Tribunal FOUND the allegations to have been substantiated. The Tribunal noted from correspondence that the respondent appeared to admit misappropriation but denied conduct unbefitting a solicitor. The Tribunal did however find that the respondent's conduct had been unbefitting a solicitor. In breaching the Solicitors Accounts Rules and paying monies for professional disbursements into office account before those monies were disbursed the respondent exemplified precisely the mischief that the Rules were designed to avoid. The payment of such monies into client account meant that they remained available to be utilised for their proper purpose, namely the discharge of experts' fees. Clients' funds were sacrosanct and the utilisation by a solicitor of such funds for his own purposes which in this case the Tribunal concluded did amount to a dishonest misappropriation, would not be tolerated.

The Tribunal ordered that the respondent be struck off the Roll of solicitors and further ordered him to pay the costs of and incidental to the application and enquiry in a fixed sum to include the costs of the Law Society's Investigation Accountant incurred in respect of both inspections and reports.

DATED this 11th day of August 1997

on behalf of the Tribunal



R B Bamford
Chairman

*Findings filed with the
Law Society on the 12th
day of August 1997*