

IN THE MATTER OF KEITH AUSTIN WILSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date Of Hearing: 2nd October 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 Peter Harland Cadman solicitor 2 Putney Hill, Putney, London, SW15 6AB on the 19th March 1997 that Keith Austin Wilson, solicitor of Aldham, Colchester, CO6 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 as permitted by Rule 7 of the said Rules;
- (c) utilised clients' funds for his own purposes;

- (d) misappropriated clients' funds;
- (e) improperly drawn up Wills in which he was the sole executor and major beneficiary without insisting that his clients take independent legal advice.

With the agreement of the respondent and the consent of the Tribunal the applicant amended allegations (e) which is set out above in the agreed amended form.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 2nd October 1997 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 was represented by David Morgan solicitor and partner in the firm of Messrs. Wright Son & Pepper of Grays Inn Square, London, WC2.

The evidence before the Tribunal included the admissions of the respondent of allegations (a), (b), (c) and (e). The respondent did not admit allegation (d) and firmly denied any dishonesty on his part. The respondent gave oral evidence as did three character witnesses, Mr A H Faulkner, Mr T W George and Mr B A Smart. Exhibit "KAW1" was handed up being a bundle of testimonials in support of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Keith Austin Wilson of , Aldham, Colchester, CO6 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 in an agreed figure of £4,000.

The facts are set out in paragraphs 1 to 16 hereunder.

1. The respondent, born in 1941, was admitted as a solicitor in 1968. At the material times he practised in partnership as Jackson & Partners at Balkerne Court, 1 Balkerne Hill, Colchester. The respondent had been a partner in the firm since 1968 and following the discovery by his partners of certain matters he retired from the partnership on the 19th August 1996.
2. Following due notice to the partners the Investigation Accountant of the Law Society carried out an inspection of the firm's books of account. Before the Tribunal was a copy of the report of the Investigation Accountant dated the 30th October 1996.
3. The Investigation Accountant's report revealed that the firm's books of account were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at 31st August 1996 was produced for inspection. The items were in agreement with the balances shown in the clients' ledger and totalled £886,204.33 but did not include further liabilities to clients of £31,789.01, revealing a cash shortage in the latter sum. The cash shortage was rectified by a cheque received from the respondent and lodged in client bank account on the 11th September 1996.
4. The cash shortage was caused by three personal payments which had been made from client bank account and charged at the instigation of the respondent to the client accounts relating to two probate matters. The details of those matters appear below.

5. The respondent acted for the executors of CWC Deceased who died in 1992 and Mrs WMC who died in 1994. The estates were administrated through Saffron Walden Herts. & Essex Building Society. On the 28th May 1993 the relevant account in the clients' ledger was credited with funds of £6,000 as was the building society account. On the same day the ledger account was charged with a client account payment of that sum to the Bank of Scotland Plc. The relevant narrative was "division share- untaxed investments". The respondent instructed the building society by letter of the 26th May 1993 to transfer the funds and in that letter stated that the transfer was to enable the deceased's widow, Mrs WMC, to deal with some "inter vivos gifts". During the course of cross examination the respondent accepted that that was untrue.
6. On the 22nd December 1993 the building society account was closed and the balance of £6,176.76 was lodged in client bank account and credited to the relevant ledger account. Subsequently a transfer to office bank account of £387.75 was made on the 24th December 1993, and the account was charged with a client account payment of £5,789.01 to Nationwide Building Society with the narrative "MC Invest" thereby reducing the balance on the account to nil.
7. The payments of £6,000 and £5,789.01, totalling £11,789.01 had been paid into the respondent's personal accounts with Bank of Scotland and Nationwide Building Society respectively.
8. In his evidence the respondent said he had borrowed the money to reduce his own mortgage commitment. He had no intention permanently to deprive anyone of that money and fully intended to repay it together with interests which would have been earned thereon if it had been invested. He said he thought the cashier might have added the narrative shown in the ledger account. He said he was an honest man and always regarded clients' funds as sacrosanct. The residual beneficiaries in the will of Mrs WMC were charitable organisations and the respondent was adamant that he would not have countenanced keeping charities out of their money. The respondent had intended to repay the monies due to the two estates of the late Mr and Mrs C from funds which he expected to inherit from the estate of Mrs MEK. No oral or written agreement had been made in relation to the loan and no precise date had been given for its repayment.
9. The respondent also acted for the executors of BS deceased who died in 1994 and for the executors of Mrs EGS who died in May 1996.
10. On the 28th September 1995 the client's ledger account of BS deceased was charged with a client account payment of £20,000 payable to Nationwide Building Society with the narrative "to invest for Mrs ES". The returned cheque bore the account number which was that of a joint Nationwide account held in the names of the respondent and his wife. The respondent told the Investigation Accountant that the cheque was paid into his account to reduce the outstanding mortgage on his home.
11. As with the monies from the other estates he had considered these monies to have been a loan which he intended to repay from his inheritance derived from the estate of Mrs MEK deceased.

12. No oral or written agreement had been made in relation to the loan and Mrs S had been unaware of the withdrawal of those funds from client bank account. The respondent told the Investigation Accountant that he believed the firm's cashier had added the narrative for the payment in the ledger account.
13. The respondent acted for Mr and Mrs K in 1989 in connection with a home income plan upon which they were seeking advice. The respondent advised those clients not to enter into the plan but to consider an alternative arrangement offered by him whereby he would pay monthly sums to them provided they executed reciprocal wills leaving their entire estates to the survivor who was to appoint the respondent sole executor with the residue, which included their home, passing to the respondent on the death of the second of them.
14. The wills were executed on the 7th January 1990. The respondent did not insist that Mr and Mrs K receive independent legal advice before executing them.
15. The respondent said he had made monthly payments to Mr and Mrs K. The monthly sum had been considerably higher than the sum they would have received under a home income plan. In total he had paid them the sum of £11,450. He had not taken a charge over their property nor had any transfer been executed. The wills had been drawn and the respondent said he was content to rely upon what amounted to a "gentleman's agreement."
16. Mr. K died in 1993. In about August 1994 Mrs K prepared a list of potential beneficiaries to whom she said she wished to leave the liquid funds of her estate. It appeared that Mrs K still intended that the respondent should inherit the property. He had not been asked to prepare a revised will to reflect Mrs K's changed wishes prior to her death (in July 1996) he had intended to use his discretion and would divide the estate, excluding the property, between the listed beneficiaries. The respondent in evidence accepted that the terms agreed with Mr and Mrs K were not recorded in writing. The respondent took the view that Mr and Mrs K benefited considerably from the scheme which he offered to them compared with that of the home income scheme. He pointed out that Mrs K had called to see him quite frequently and she had derived much comfort from their relationship.

#### **The Submissions of the Applicant**

17. In the submission of the applicant the respondent had been guilty of dishonest misappropriation of clients' funds. He invited the Tribunal to make that finding, pointing out that he was not alleging a criminal offence and it was not part of his case that the respondent had any intention permanently to deprive those entitled of their monies. It was clear that the payments made from clients' funds were payments of a personal nature. Clients had not only not consented to the utilisation of their monies but they had not been told of the circumstances of the purported loans. There had been no openness in the transactions whatsoever.
18. With regard to Mr and Mrs K and the respondent's suggestion as to ways in which he might personally assist them to improve upon the monthly income deriving from a home income plan, there was no doubt that if a client refused to take independent

advice when a solicitor was involved in a prospective transaction with that client then the solicitor must refuse to act or to allow the proposed transaction to continue.

19. The respondent appeared to have considered it satisfactory when he had paid a total sum of £11,450 to Mr and Mrs K, to regard their property as his own.
20. In the submission of the applicant he had discharged the high standard of proof required to make out the respondent's dishonesty.

### **The Submissions of the Respondent**

21. The Tribunal were invited to take due note of the three persons who attended before them to give oral evidence as to the respondent's good character. The Tribunal were also invited to consider the large number of written testimonials placed before them in support of the respondent. The character witnesses and the written testimonials all pointed to the high regard for him by other members of the solicitors profession and others and the esteem in which he was held. He was considered to be an excellent solicitor whose honesty and integrity was never brought into doubt. He was always entirely trustworthy in all of his transactions.
22. Relationships within the respondent's partnership had been strained. The financial performance of the firm declined during the early 1990's as the firm derived most of its income from property related work which was particularly badly affected by the recession. An incoming partner had, in the opinion of the respondent, been critical to the attitude of the respondent's partners when he gave them a full explanation as to the background concerning the arrangement with Mr and Mrs K.
23. During the three years previously the respondent had felt under enormous financial and professional pressure. He was stressed by the bad relationship with his partners and often felt that he was the only one trying to promote the firm. His health and his judgment were adversely affected.
24. The respondent's clients had not suffered in any material way from his actions. He accepted that he had made errors of judgment but they would not have resulted in any loss to any client or third party. Hitherto the respondent had always performed his duties as a solicitor in an exemplary fashion.
25. With regard to the payments from the estates of Mr and Mrs C and Mr and Mrs S, the respondent himself drew those matters to the attention of the Investigation Accountant before he undertook his investigation.
26. At the time when the respondent borrowed the monies from the estate he was in financial difficulties in part from the depletion from his own resources to accommodate new partners in the firm and partly because of his need to finance school fees for his children, his income having dropped owing to the continuing recession. The respondent had anticipated family inheritances and he was aware he would become a beneficiary in the estate of Mr and Mrs K.

27. The respondent accepted entirely that in "borrowing" the money he acted without instructions and in breach of his professional duties. He always intended to repay the monies and had done so. He retained a note of the sums which were due to be paid to residuary beneficiaries so that he could refer to that when he was in a position to refund the money to the estate. He maintained an intention to ensure that the charitable beneficiaries would receive full benefit of the moneys intended for them by Mrs C.
28. In the matter of Mr and Mrs S, the respondent had undertaken considerable extra work. He had arranged for a cheque for £20,000 to be paid to Nationwide Building Society to reduce the mortgage on the home in which the respondent lived with his wife and children. He always intended to repay those monies when he received his inheritance from the estate of Mrs K. The respondent kept a separate record of the monies which were due to be repaid.
29. The respondent had considered asking Mrs C for the loan when he would also have asked her to seek independent advice. He believed if he had followed that course she would certainly have agreed as she shared a considerable interest in his children who were gifted academically and musically. A mixture of embarrassment and pride prevented the respondent from dealing with the matter in that way. The borrowing was kept in proportion so that it could be repaid when circumstances permitted. The respondent had made a vow in church that it would be repaid in full when he was in a position to do so.
30. The respondent had been in practice for over thirty one years and the events before the Tribunal represented the only occasions upon which he had ever taken monies in any unauthorised fashion from funds standing to the credit of clients of the partnership. The respondent's actions had been entirely out of character. All of the monies had been repaid and those entitled had received an appropriate level of compensation.
31. In the matter of Mr and Mrs K neither they nor any third party had suffered any loss as a result of the respondent's activities. Mr and Mrs K were long established clients of the respondent and they had become friendly. Mr and Mrs K had no close family of their own and a special relationship had developed. Under the terms of their agreement the respondent was to pay them a monthly sum of money for as long as they both lived and in return they were to leave their estate to the respondent when the last of them had died. The respondent made proposals to increase the payments in line with inflation which was not something which was offered as part of the formal home income plan which they had been considering. Mr and Mrs K had no close relatives and they were happy with the arrangement. At the time when the arrangement was made Mr and Mrs K were both in good health. No formal contract or arrangement had been entered into as to the terms upon which they were required to leave their estate in their wills. Title to the property was not to be transferred until the death of the survivor. Mr and Mrs K were both in a position to change their minds at any time prior to their death. The respondent had dealt with the matter entirely as a matter of trust and anticipated fully that he would be making the monthly payments for a considerable length of time.

32. The respondent accepted that he had not advised Mr and Mrs K that they should specifically obtain independent legal advice; however they had been given opportunities to reflect and consider with others whether or not they wished to enter into the wills. Mr K's working experience rendered him fully capable of understanding the extent of his estate and the nature of his wishes as expressed in his will.
33. The respondent's personal friendship with Mrs K continued after Mr K's death. The respondent had frequent meetings with her and he believed she appreciated the personal service he gave to her after a husband's death. She decided that the respondent should have her late husband's medals.
34. In August 1994 Mrs K visited the respondent in his offices indicating that she wished certain other individuals to have some benefit from her estate. She produced a hand-written list. It was not clear to the respondent whether she wished to make immediate formal testamentary provision for those people. Subsequently the respondent had many more informal meetings with Mrs K prior to her death in July 1996. He believed he should have pressed her for specific instruction, however when she became ill the respondent did not feel it appropriate to push her. He had already formed the intention that should she die without executing any formal codicil then he would ensure that the named beneficiaries would receive a share of the liquid sums remaining in the estate after her death.
35. The respondent did not appreciate with any clarity the weight of his responsibility to secure that Mr and Mrs K were independently legally advised. He regarded the arrangement as a friendly one which could have been revoked at any time. He had no doubt that if Mr and Mrs K had received independent advice at the appropriate time, they would nevertheless have proceeded with the arrangement. The respondent certainly had not exerted any undue influence or sought to protect his own position.
36. After leaving his partnership, the respondent undertook a certain amount of locum work which he hoped he would be able to continue. He also continued with voluntary activities such as driving blind people to their lunch club and senior citizens to their social club. The respondent had been elected church warden in May of 1997 having previously acted as a sidesman.
37. The respondent had been married for nineteen years. He and his wife had two teenage children who were still at school. His wife was a part time teacher.

### **The Findings of the Tribunal**

The Tribunal FOUND the allegations to have been substantiated. Despite paying due heed to the excellent testimonials and evidence as to the respondent's character placed before them, they found themselves unable to avoid the conclusion that the respondent's activities had been dishonest. The Tribunal accepted that the respondent had been subjected to a number of pressures. However there was no pressure great enough to excuse a solicitor from treating clients' money as if it was his own. The rules relating to the treatment of clients' funds and the rules on the drawing of clients' wills under which it was intended that a solicitor might benefit as well as in any transaction in which a solicitor is personally involved with a client are the areas in

which it must never be forgotten that the clients' interests are paramount and that the solicitor must be entirely punctilious in compliance with the relevant rules of professional conduct.

The respondent's conduct was not made up of errors but of deliberate acts which he attempted to conceal.

The solicitors' profession would not tolerate such behaviour in one of its number and 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 to include the costs of the Investigation Accountant of the Law Society and ordered them to be fixed in a figure which had been agreed between the parties, namely £4,000.

DATED this 21st day of November 1997

on behalf of the Tribunal



R B Bamford  
Chairman

*Findings filed with the  
Law Society on the 25th  
day of November 1997*