

IN THE MATTER OF JOHN GRAY LINGEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. G. B. Marsh (in the chair)
Mr. A. G. Ground
Lady A. Maxwell-Hyslop

Date of Hearing: 11th February 1999

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 (the Office) by Gerald Malcolm Lynch solicitor of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex on 4th April 1997 that John Gray Lingen solicitor of Pontesbury, Shrewsbury, Shropshire 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.

On 21st December 1998 the applicant made a supplementary statement containing a further allegation. The allegations below are those contained in the original and supplementary statements.

The allegations were that the respondent had:-

- (i) acted in breach of the provisions of the Solicitors Accounts Rules 1991 in the following particulars namely that he had:-

- a) drawn from clients' account monies other than in accordance with the provisions of Rules 7 and 8 of the aforesaid Rules and improperly utilised the same for his own benefit alternatively for the benefit of other persons not entitled thereto;
 - b) acted in breach of Rule 11 of the aforesaid Rules in that no reconciliations of client ledger balances with cash held in client bank account had been prepared since 31st March 1995;
- (ii) dishonestly, alternatively improperly utilised clients' monies for his own purposes, alternatively for the purposes of other persons not entitled thereto;
 - (iii) been convicted on two counts of theft and had been sentenced to imprisonment for two years on each count;
 - (iv) By virtue of each and all of the aforementioned been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room No. 60 Carey Street, London, WC2 on 11th February 1999 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs Drysdales of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex appeared for the applicant and the respondent was represented by Mr W. G. Ranson of Ransons solicitors, 15 Church Street, Wellington, Telford.

The evidence before the Tribunal included the admissions of the respondent. The Tribunal also had a bundle of testimonials written in support of the respondent.

At the conclusion of the hearing the Tribunal ordered that the respondent John Gray Lingen of Redditch, Worcestershire (formerly of , Pontesbury, Shrewsbury, Shropshire) 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 £4,393.10 inclusive.

The facts are set out in paragraphs 1 to 15 hereunder:-

1. At the material times the respondent was a sole principal, his firm being Lingen & Co practising from 11 Belstone, Shrewsbury, Shropshire, SY1 1HU. He was 49 years of age and had been admitted as a solicitor in 1980.
2. Pursuant to notice duly given the Investigation Accountant of the Law Society inspected the respondent's books of accounts. The inspection began on 1st August 1996. The Investigation Accountant's report dated 7th August 1996 was before the Tribunal.
3. That report revealed that the respondent's books of accounts were not in compliance with the Solicitors Accounts Rules.
4. A list of liabilities to clients as at 30th June 1996 was produced for inspection. The list included debit balances in respect of 86 individual client matters varying in amount from 25p to £8,675.84 and totalling £52,695.88. No reconciliations of client

ledger balances or cash held in client bank accounts had been prepared since 31st March 1995. The most recent reconciliation provided by the respondent was that as at 31st July 1993.

5. The investigation accountant did not consider it practicable to attempt to calculate the total of liabilities to clients but calculated that as at 19th February 1996 there was a minimum liability of £20,621.38 in respect of three specified clients. Cash available as at 19th February 1996 was £2,076.94 resulting in a minimum cash shortage of £18,544.44. The respondent had been unable to rectify that minimum cash shortage.

6. Because the respondent's books were unreliable it was not possible to account for the minimum cash shortage but the following were believed to be contributory factors:-

(i)	Improper Payments from Client Bank Account	£8,675.84
(ii)	Improper Transfers from Client to Office Bank Account	1,789.00
(iii)	Clients' Funds Incorrectly Lodged in Office Bank Account	5,565.00
(iv)	Over-payments	<u>1,801.00</u>
		<u>£17,830.84</u>

7. In particular the improper payments from Client Bank Account totalling £8,675.84 had been made to Mr H. who was not a client of the firm but an employee. The payments had been made on behalf of Mr H. in settlement of his personal liabilities and resulted in a debit balance as at 1st July 1995 and this remained the position as at the inspection date. The defendant admitted that the payments were improper.

8. The improper transfers from client to office bank account totalling £1,789.00 had been made in respect of a client's litigation matter. The client had on 25th January 1996 paid £5,000.00 towards costs and, after payment of counsel's fee, there had been over transfers to office account which the respondent had been unable to explain.

9. On 2nd February 1995 two cheques totalling £5,565.00 received on behalf of a client were lodged in the office bank account. The respondent told the Investigation Accountant that had been due to an error. He had been unable to rectify the error when he discovered it after the event.

10. The respondent had acted for himself and his wife in connection with the purchase of a property. On 14th July 1995 the sum of £750.00 sent from client account to solicitors on the other side left a debit balance in that sum. After a number of receipts and payments the client ledger account revealed a debit balance of £1,801.00 as at 15th December 1995. The respondent told the Investigation Accountant he had been unaware of overpayments in respect of that matter or that the account remained overdrawn. He believed that the "cash back" received from Alliance & Leicester Building Society would have cleared the previously overdrawn account, but that had not been the case. Further transactions allocated to that account between 21st February 1996 and 24th May 1996 increased the debit balance to £2,268.09 at the latter date.

11. The Investigation Accountant went on to report that the respondent and Mr H (his employee) had been arrested by the police on 31st July 1996 in connection with an

investigation into alleged fraud on the Legal Aid Board. At the time of the inspection neither had been charged.

12. At the hearing the Tribunal was told that the investigation related to a suspicion of fraud perpetrated through the Green Form Scheme. The respondent had been persuaded by his employee to implement a scheme whereby a van was driven to outlying areas, offering legal advice to those who qualified to receive it under that Scheme. The Legal Aid Board had expressed concern at the great number of claims made under the Green Form Scheme by the respondent. The investigation revealed that there had been no impropriety in that matter and the sums claimed reflected genuine advice and assistance given under the Scheme to those properly entitled. It was acknowledged that the respondent's service to those clients had been unconventional.
13. The Investigation Accountant went on to report that the respondent's Accountant's Report for the year ended 31st August 1995 signed by a chartered accountant had been filed on time and was unqualified showing liabilities to clients as being equalled by cash held in client bank account at each of two comparison dates.
14. On 21st September 1998 at Sevenminster Magistrates Court the respondent was convicted on two counts of theft and committed to Worcester Crown Court for sentence. On 20th November 1998 at Worcester Crown Court the respondent was sentenced to two years imprisonment on each count. There had been no appeal against this sentence.
15. The charge of theft involved the sum of £30,000, the property of E. J. C. and £14,000, the property of A.G. F. The respondent had pleaded guilty to both charges.

The Submissions of the Applicant

16. The initial application relating to breaches of the Solicitors Accounts Rules had been adjourned by the Tribunal on 3rd October 1997 pending the outcome of the police investigation and any ensuing proceedings. The matter had been brought back to the Tribunal after the respondent had been tried and convicted.
17. The breaches of the Solicitors Accounts Rules alleged had been clearly made out and indeed had been admitted. The applicant would in any event have alleged dishonesty or at best impropriety in the respondent's use of clients' money as revealed by the Investigation Accountant's report and the respondent's failure to explain the breaches and the deficiencies.
18. In view of the fact that the respondent had been convicted of a criminal charge involving dishonesty it was the applicant's position that manifestly the respondent as a solicitor, having been sentenced to a custodial sentence in respect of charges involving clear dishonesty, he had brought himself and the solicitors' profession into disrepute and had failed to display the probity, integrity and trustworthiness required of a solicitor. He was clearly guilty of conduct unbecoming a solicitor of the most serious kind.

19. The attention of the Tribunal was drawn to the sentencing remarks of the learned Judge in the Worcester Crown Court, namely that the respondent had perpetrated a serious and significant breach of trust and had been dishonest.

The Submissions of the Respondent

20. The respondent having qualified as a solicitor in 1980, had practised in partnership without any hint of inappropriate conduct.
21. The Respondent had taken on an employee whom he knew to have a criminal record. It was that employee's idea to implement the scheme of supplying legally aided advice via the Green Form Scheme to clients in outlying areas who otherwise would not have considered taking the advice of a solicitor. That employee had been a very forceful character and in reality the respondent had been misled. The respondent had taken the employee at face value.
22. Substantial sums of money had been generated by the scheme providing Green Form advice but the scheme had been expensive to set up. The respondent had had to pay the costs of running his practice. He had utilised clients' monies in the expectation that he would be able to put the record straight within a short period of time upon receipt of payment from the Legal Aid Board. When the Legal Aid Board made it plain that it was not prepared to sanction the requested payments the deficiency on client account became insurmountable.
23. The police had been satisfied that there was no dishonesty in connection with the respondent's Green Form advice scheme. The convictions had been in respect of monies taken from client account.
24. Previously the respondent had been of good character and had maintained the respect of lay members of his community, his clients and other members of the solicitors' profession. He had allowed himself to become dominated by a dishonest and forceful employee.
25. Throughout the investigations and enquiries the respondent had been entirely co-operative. He had made appropriate admissions at early stages. He appreciated that he had fallen below the high standards expected of him as a solicitor. It was hoped that the Tribunal would consider that the custodial sentence imposed upon the respondent had satisfied his debt to society. It was recognised that the Tribunal would wish to impose a penalty upon the respondent but the Tribunal was invited in all of the circumstances not to impose the ultimate sanction.
26. The respondent was fifty years of age and hoped that he might be able to put his life back together upon his release from prison. He hoped to be able to provide for his family; he had a fourteen year old son. The only skills which the respondent had were of those of a conveyancing solicitor. It was not automatic that solicitors convicted of offences involving dishonesty were struck off the Roll.
27. The Tribunal was invited to pay due attention to the many testimonials written in support of the respondent indicating that his wrongful action had been wholly out of character.

28. The respondent was a competent conveyancing solicitor and could again be engaged in that capacity. He accepted that he should not in future practise as a sole principal. He accepted that he had breached the trust reposed in him by his clients in a serious way. The respondent had endured a nightmare for a period of some two and a half years before appearing before the Tribunal.


The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.

The Tribunal recognised that the respondent had been a solicitor enjoying the trust and respect of his fellows in the solicitors' profession and members of the community. The Tribunal further accepted that the respondent had allowed himself to be pressurised by an unscrupulous and dishonest employee. Clearly the respondent had been guilty of a major error of judgement when he employed a person known to have a criminal record. The respondent himself had, however, acted wholly improperly and dishonestly in the handling of clients' monies entrusted to him. That was a very serious matter. Members of the public must be protected from any possibility that they might be exposed to such dishonesty on the part of a solicitor. The good reputation of the solicitors' profession had to be maintained. Such behaviour could not be tolerated and it was only right and proper that the respondent should be struck off the Roll of solicitors and pay the applicant's costs to include the costs of the Law Society's investigation accountant. The Tribunal ordered that such costs be paid in a fixed sum.

DATED this 5th day of April 1999

on behalf of the Tribunal


G. B. Marsh
Chairman

