

IN THE MATTER OF DOUGLAS WILLIAM STEVENSON, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J C Chesterton (in the Chair)
Mr. D E Fordham
Lady Bonham-Carter

Date Of Hearing: 4th December 1997

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Andrew Christopher Graham Hopper solicitor of P O Box 7 Pontyclun, Mid Glamorgan CF7 9XN on the 16th May 1997 that an order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Douglas William Stevenson of Bexhill on Sea, East Sussex TN39 a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the respondent had occasioned or been a party to an act or default in relation to the practice of a solicitor to whom he was a clerk which involved conduct on his part of such a nature that it would be undesirable for him to be employed by a solicitor in connection with his practice, by reason of his failure as financial controller to take reasonable or adequate steps to prevent serious misuse of clients' monies by the senior partner of his employers.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 4th December 1997 when Andrew Christopher Graham Hopper solicitor of P O Box 7, Pontyclun, Mid Glamorgan appeared for the applicant and Mr Christopher J A Cope of Messrs Cope's, solicitors of Wycombe House, 9 Amersham Hill, High Wycombe, Bucks, HP13 6NR appeared for the respondent.

The evidence before the Tribunal included the oral evidence of the respondent and the oral evidence of Barry Cotter, Sarah Anne Buttrey, Joanna Wilson, Lisa Rose, Pearl Gadd, and Pauline Macey.

At the conclusion of the hearing the Tribunal Ordered that as from the 4th December 1997 no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Douglas William Stevenson of Bexhill on Sea, East Sussex a person who was or had been a clerk to a solicitor and the Tribunal further ordered him to pay the costs of these proceedings to be taxed if not agreed.

The facts are set out in paragraphs 1 to 31 hereunder:-

1. The respondent, who was not a solicitor, was at the material times employed by the firm of Durnford Ford, solicitors which firm practised in Hastings and elsewhere in the South East of England. The respondent's title was "financial controller" of the firm, he was a Chartered Accountant although he did not hold a Practising Certificate.
 2. Graham Maurice Durnford Ford, the former senior partner of the firm, was Struck Off the Roll of Solicitors by order of the Tribunal on the 13th July 1993. He had been sentenced to a term of ten years imprisonment for criminal offences arising from the facts that were before the Tribunal in connection with this matter.
 3. The Tribunal had before it a copy of the Report of the Investigation Accountant of the Law Society, Mr Cotter, following the inspection of the books of Messrs. Durnford Ford on the 2nd June 1992. That Report revealed the following matters.
 4. The partners gave Mr Cotter details of their professional histories. They said they conducted a general practice assisted by a staff of one hundred and fifty-two including the respondent, a Chartered Accountant, who had been the firm's financial controller from 1st September 1986 until 11th June 1992. They said they were controlled trustees in sixty three matters and that they were regulated by the Law Society in the conduct of investment business.
 5. Mr Cotter went on to report that the firm had ceased to practice on 31st May 1992 since when the four senior equity partners had been winding up the practice under the supervision of Mr Nicholas Wright of Messrs. Wright Son & Pepper representing the Law Society. Touche Ross & Co., accountants, had been instructed to carry out a detailed investigation into the accounts of the firm.
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6. Mr Cotter said that the firm effectively ceased to practise contemporaneously with the commencement of his inspection and the Touche Ross & Co. investigation and his inspection, although protracted, had not been exhaustive. Nevertheless serious breaches of the Solicitors Accounts Rules were reported upon by Mr Cotter and a minimum shortage of £711,489.16 on client account was noted together with a further shortage of £125,492.96 in respect of a controlled trust.
7. Messrs. Touche Ross had stated in a preliminary report to a meeting of creditors of the four beforementioned equity partners on the 27th August 1992 that they had identified 484 clients (mainly in connection with probate matters) whose accounts had been improperly charged with excess bills relating to 2,500 matters. The report estimated potential liabilities not shown by the books in respect of those matters of some £6.6 Million. Examples were given of two of those matters which related to the executors of WFMB deceased and the executors of EGW deceased.
8. One set of books was maintained in respect of all offices and it was not in compliance with the Solicitors Accounts Rules as it contained numerous improper entries made apparently at the instigation of Mr Durnford Ford.
9. Mr Cotter did not consider it practicable to attempt to compute the partners' liabilities to clients. However, they agreed that liabilities totalling £784,279.84 existed at 29th June 1992 in respect of which only £72,790.68 was held in client account. In consequence, they agreed, there existed a minimum shortage of £711,489.16 on client account at that date which they said they were unable to replace. In the case of eight client executors there was a Nil balance available on client account even though there were substantial outstanding liabilities and in one case there was a liability of £276,054.94 when only £72,790.68 was held on client account.
10. In the matter of "the executors of WFMB deceased" the firm's probate partner acted for the executors of WFMB who had died in May 1991 leaving a gross estate of £133,648.00. By 4th March 1992, estate funds totalling £140,684.29 had been received and lodged in client bank account. After allowing for five pecuniary legacies totalling £13,500.00, the residuary estate was to be held on trust for the benefit of the Guide Dogs for the Blind Association.
11. During the period 14th August 1991 to 5th March 1992 the relevant account in the client ledger was charged with twenty-five transfers from client to office bank account varying in amount between £0.05 and £24,973.75 totalling in all £125,172.83 and purporting to be in respect of costs. In the same period forty interim bills varying in amount from £1,116.25 to £13,218.75 and totalling £139,356.35 were posted to the ledger card. There was no evidence to suggest that any bills had been delivered to the executors or that they had agreed the transfers. During the same period the clients ledger account was also charged with £2,011.46 in respect of disbursements, resulting in a Nil balance on the client ledger account at 5th March 1992. That remained the position at 29th June 1992.
12. On 15th April 1992 when the balance on client account in respect of the matter was Nil, £13,500.00 was transferred from office bank account to client bank account in

order to pay the pecuniary legacies of £13,500.00. No payment to the residuary beneficiary was noted.

13. In the matter of the executors of EGW, the probate partner acted for the executors of EGW who died on 18th February 1990 leaving a gross estate of £107,849.39. By 15th November 1991 estate funds totalling £111,751.02 had been received and lodged in client bank account. After allowing for a pecuniary legacy of £500.00 the residuary estate was to be divided equally between eight beneficiaries.
14. During the period 9th March 1990 to 10th January 1992 the relevant account in the client ledger was charged with twenty-five transfers from client bank account to office bank account, varying in amount between £31.05 and £24,910.00 and totalling £107,508.00 and purporting to be in respect of costs. In the same period fifty-nine interim bills, varying in amount from £35.00 to £11,546.76 and totalling £107,385.00 were posted to the ledger card. No evidence was seen to suggest that any bills were delivered to the executors. During the same period the clients ledger account was also charged with £3,743.02 in respect of disbursements and £500.00 in respect of the pecuniary legacy, resulting in a credit balance of £14.97 on the client account at 10th January 1992. That was reduced to Nil by 29th June 1992. No payments to the residuary beneficiaries were noted.
15. Mr Cotter reported the misuse of controlled trustee funds in the case of SHPB. The probate partner acted for the respondent and another partner who were co-trustees of the estate of SHPB who died on 29th October 1991 leaving a gross estate of £127,675.00. By the 29th April 1992 estate funds totalling £129,300.35 had been received and lodged in client bank account. After allowing for two pecuniary legacies totalling £11,000.00 the residuary estate was to be held on trust entirely for the benefit of the testator's brother. During the period 13th December 1991 to 29th April 1992 the relevant account in the client ledger was charged with seventeen transfers from client bank account to office bank account, varying in amount between £3.34 and £34,368.75 and totalling £125,492.96, and purporting to be in respect of costs. In the same period, thirty eight interim bills, varying in amount from £139.24 to £13,597.00 and totalling £125,363.45 were posted to the ledger card. Mr Durnford Ford's co-trustee confirmed to Mr Cotter that no bills had been delivered in respect of costs to him nor had he authorised any of the transfers to be charged to the estate's client ledger account. During the same period the ledger account had also been charged with £3,222.09 in respect of disbursements resulting in a credit balance of £585.30 on the client ledger account in respect of the matter as at 29th April 1992. The co-trustee said that as far as he was aware no payments either to the pecuniary legatees or the residuary beneficiary had been made.
16. The minimum cash shortage overall of £711,489.16 had arisen due to the improper transfer of funds from client bank account to office bank account in respect of fictitious bills of costs which had not been delivered to the clients concerned. The partners told Mr Cotter that all the fictitious bills had been prepared on the authority of Mr Durnford Ford and therefore the subsequent improper transfers of funds to office bank account were made at his instigation without the knowledge of any of the other partners. Notwithstanding, one of Mr Durnford Ford's partners when interviewed on 20th August 1992 had admitted to Mr Cotter that he had regularly signed large

numbers of blank client account cheques and blank client bank account to office bank account transfer slips which were then utilised by the accounts department as necessary to effect the movement of funds between client bank account and office bank account.

17. Graham Durnford Ford had been interviewed by Mr Cotter on the 26th June 1992 when he admitted that a "number" of bills that were drawn at his instigation were never delivered to the clients concerned and that the subsequent transfers from client bank account to office bank account in respect of those undelivered bills were improper. He also admitted that many of the bills raised by him could not be justified as to quantum. He contended, however, that "it was not in his comprehension that he was acting improperly".
18. The fictitious bills when processed through the partnership accounting records resulted in substantial "negative work in progress" figures on many of the client matters involved. A computer printout dated 11th June 1992 listing all matters with negative work in progress found in the respondent's office totalled £4,674,857.20.
19. When funds were urgently required to pay residuary legatees, the relevant clients' ledger accounts were placed in credit by transfers from office bank account to client bank account supported by fictitious credit notes. In due course additional fictitious bills were prepared on other matters to support further improper transfers from client bank account to office bank account.
20. Mr Cotter went on to report that the respondent and his partners had delivered Accountant's Reports for the year ending 31st May 1990 signed by Mr N.S. Chapman, ACA, and for the year ended 31st May 1991 signed by Mr S I Cawley, FCA, (both of Messrs. KPMG Peat Marwick McLintock) which showed comparison figures in agreement at both extraction dates.
21. From the clients' ledger cards of the nine clients referred to above it could be determined that at the relevant dates minimum shortages due to improper transfers from client bank account to office bank account existed as follows:-

Year ended	31.05.91		31.05.90	
Extraction dates	<u>31.05.91</u>	<u>30.11.90</u>	<u>31.05.90</u>	<u>30.11.89</u>
Minimum shortage	<u>£383,581.88</u>	<u>£174,960.08</u>	<u>£50,974.18</u>	<u>£348.88</u>

22. An examination of client bank account to office bank account transfers and funds repaid from office bank account to client bank account for the month of May 1991 alone (the last month of the financial year) revealed the following position:

Total transfers from client bank account to office bank account on account of costs - May 1991	<u>£401,758.28</u>
Improper transfers instigated by Mr Durnford Ford May 1991	<u>£295,676.93</u>
Transfers from office bank account to client bank account to repay shortages on client bank account - May 1991	<u>£132,720.23</u>

23. Comparative figures were also extracted from the records for May 1990 revealing the following:

Total transfers from client bank account to office bank account - May 1990	<u>£305,149.61</u>
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Improper transfers instigated by Mr Durnford Ford May 1990	<u>£90,933.40</u>
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Transfers from office bank account to client bank account to repay shortages on client bank account - May 1990	<u>£19,523.43</u>
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24. Mr Cotter's view was that it was inconceivable that the respondent as financial controller would have been unaware of the client account shortages caused by the improper transfers from client bank account to office bank account as a result of fictitious bills instigated by the respondent. The existence of the "negative work in progress" report in his office indicated prior knowledge of the improper transfers, and that seventy-five percent of the client bank account to office bank account transfers in May 1991 were improper or that in the same month transfers of £132,720.23 had been made from office to client bank account to replace existing shortages.
25. The structure of the firm at Durnford Ford was extremely unusual. There were some four or five partnership levels. Graham Durnford Ford was the most senior. He masterminded the administration of the firm and took the lion's share of the profits. The firm's organisation was unique. It comprised a large number of bureaux which were like large departments. There were twenty three such bureaux. There was a financial services bureau, quality control bureau, professional standards bureau, a court costs office and an accountancy bureau. Client managers were employed who were not qualified solicitors. The intention was that they should maintain all contact with clients and should thereby free the qualified solicitors from holding meetings with demanding clients and enable them to deal with large volumes of fee earning work.
26. It appeared that fee earners did not prepare their own bills. They recorded time engaged on a matter on computer but the decision as to charges was not left in the hands of the individual fee earners. That was so in particular in probate matters. In the last year of the existence of the firm of Durnford Ford, Graham Durnford Ford reserved to himself entirely the responsibility for billing.
27. In practice Mr Ford simply invented bills. He established how much was credited to client account and then produced hand written lists of costs to be taken on any particular day. The books of the firm reflected those actions. There were entries in respect of a huge number of interim bills. The bills were not sent to clients, indeed clients were in ignorance that their monies were being utilised to settle those bills. The bills were drawn for sums vastly in excess of the firm's proper entitlement. The example was given of an estate valued at £140,000 from which £125,000 had been taken by way of costs. When computerised time records were compared with amounts taken from client account they revealed that the sums taken were greatly in excess of what would have been proper.

28. It was the respondent's position that he did not know that anything was wrong. He accepted that certain bills of costs apparently drawn by Mr Ford had been very large. He was, however, unaware of the size of the estates involved in which bills for probate work had been drawn. He said that he had not been concerned that the quantum of the bills did not reflect the fee earner's time recorded on the computer in dealing with that particular matter. The respondent was aware that the fee earner's time spent on a probate matter was not the only facet of charging: there being an uplift charge to be added which reflected the size of the estate. He said that he had not been alerted to shortages on client account and had no reason to suppose that client account was not being conducted properly. He prepared bank reconciliations, and even though the client account which he reconciled did not have vast sums of money in it from time to time, he was aware that another employee employed in the firm's financial services department was instructed to invest client account funds to obtain the best available return.
29. Members of staff of Durnford Ford giving evidence before the Tribunal had expressed concerns to the respondent in particular that in or about April 1992 the credit balance on the client account had fallen to £60,000 which was known to be inadequate to meet the immediate needs. In probate matters estates went into debit in the sense that funds were depleted by transfers to office account in payment of interim bills and it was frequently necessary to reverse such transfers by raising credit notes to provide sufficient credit balances to enable beneficiaries to be paid.
30. It was also pointed out to the respondent by a member of staff that monies paid to the firm for deposits on conveyancing transactions, including stakeholder money, had been transferred to office account for costs. Further, monies had been transferred from client account to office account for costs out of damages held for clients in Legally Aided matters.
31. Staff had been aware and had pointed out to the respondent that interim bills were not being sent to clients in probate matters.

The submissions of the applicant

32. The respondent's explanation that he was unaware of any impropriety was expressly rejected by the applicant. The respondent was a Fellow of the Institute of Chartered Accountants in England & Wales and was qualified to provide an Accountant's Report pursuant to Section 37 of the Solicitors Act 1974 and the Rules made thereunder. He was also qualified to police compliance by solicitors with the Solicitors Accounts Rules. The respondent could reasonably have been expected to have at least the same working knowledge of the Solicitors Accounts Rules as any solicitor.
33. The case against the respondent was that he was aware by reason of concerns expressed to him by members of staff in his department and others and indeed from the substantial "negative work in progress" figures, that the actions of the senior partner of the firm by which he was employed had been involved in serious breaches of the Solicitors Accounts Rules. The respondent had taken no action on the matter and had not informed any other party including any other equity partner in the firm.

34. At the time of the hearing, claims on the Law Society's Compensation Fund had reached a figure of £9.6 million.
35. The applicant accepted that Graham Durnford Ford was secretive and Machiavellian. However, the background and experience of the respondent would have rendered it obvious to him what was going on and even if that had not been so, he was alerted by the serious concerns of members of his staff.

The submissions of the respondent

36. It was alleged against the respondent that in his position as financial controller of Durnford Ford he failed to take reasonable and adequate steps to prevent the misuse of clients' monies by Mr. Ford. The Tribunal had not been told what steps he should have taken. There was a heavy onus of proof on the applicant and the Tribunal had to be satisfied beyond reasonable doubt. The Tribunal had no documents before it. The Durnford case had generated a warehouse of papers, very few of which had been placed before the Tribunal.
37. The respondent was not alerted to the fact that anything was untoward. Lists of transfers prepared by Graham Durnford Ford listed clients' names, reference numbers, amounts and disbursements. In the only list before the Tribunal only two transfers were over the sum of £1,000 and no vast sums had been transferred from client to office account.
38. It was suggested that Mr. Ford and other fee earners produced (on a daily basis) schedules of monies to be transferred from client account to office account, but there was no evidence before the Tribunal that the schedules were produced on a daily basis.
39. With regard to the reference to credit notes being drawn, although in the papers before the Tribunal it appeared that fairly substantial sums, for example £32,000 in May 1991, had been transferred from client to office account, the respondent had been unaware as to how many clients a transfer of that order involved. No credit notes had been placed before the Tribunal.
40. Despite the fact that Mr. Ford had been convicted of a number of criminal offences, the Tribunal was invited to take note of the fact that the respondent had not been prosecuted by the police.
41. With regard to costs charged in probate matters, if there was an element of negative work in progress, the balances were not written off until the matter was concluded. Most of the negative work in progress related to probate matters. The firm was entitled to charge on a percentage basis which meant that probate bills would have exceeded time recorded charges on every case. It was inevitable therefore in probate cases that there would always be a substantial negative work in progress figure outstanding at any one time. The respondent had been aware that the firm dealt with many substantial estates. He did not know the size or number of estates being handled by the firm and he was not in a position to judge that any figures prepared by the senior partner were wrong.

42. The turnover of the firm of Durnford Ford was some three and a half million pounds per annum and that figure was quoted in order to put the transfers made from client to office account into perspective. There were no transfers that would have aroused the respondent's suspicions.
43. The firm's financial year ended on 31st May. It was a matter for Mr. Ford to decide what complaints about billing were justified and to take a view. A series of transfers were made in May 1991 from office to client account and there was no reason why the respondent should have been put on notice that something improper was going on. That, on the face of it, was a perfectly proper house-keeping activity with a view to being placed in an advantageous income tax position.
44. It had been suggested that it was inconceivable that the respondent had not been aware of client account shortages or that he had not been aware that Mr. Ford had been rendering fictitious bills. The Tribunal had no evidence of such matters before it.
45. The applicant himself had told the Tribunal that Mr. Ford ran the firm as his own firm, by-passing his partners. In his sentencing remarks the Learned Judge had described Mr. Ford, at the time of his conviction, as being Machiavellian and whose partners had been unaware of his activities. If Mr. Ford's partners had not been aware, then it was not surprising that the respondent, an employee, was similarly ignorant. The respondent had not known that invoices had not been sent out when bills had been drawn and transfers made in respect of them. It was true that some invoices did not bear an address, but again, that did not arouse any suspicion as on a number of occasions partners in the firm were the executors and trustees of an estate.
46. The respondent acknowledged that two members of staff had been to see him in April 1992 expressing their concern that client account was in credit only in the sum of £60,000. the respondent listened to them and agreed to carry out a special enquiry. Although that had occurred some five and a half years before the hearing, the respondent recalled that he had made enquiry and again had not been concerned. The firm was a very large one employing some two hundred and fifty people. The respondent himself was in charge of a department of some thirty people. His department occupied some four floors of a building.
47. The respondent rejected the criticisms made of him. He had been subjected to a robust examination he was unshakeable and continued not to accept there had been any failings on his part.

The Tribunal FOUND the allegation to have been substantiated. The Tribunal agreed with the applicant that it was inconceivable that a man of the respondent's background should not question and be alarmed at what was going on within the firm. It was extraordinary that less qualified and experienced members of staff were concerned and made their concerns known to the respondent.

The Tribunal find it extraordinary that the respondent maintained a record of "negative work in progress". A better description would have to be "over-charging" or at least certainly "charging in advance". If a solicitor charges in advance he is taking money

on account of costs and that money should in any event under the Solicitors Accounts Rules be retained in client account. The Tribunal noted that it was common practice to "round up" bills and that was another example of charging in advance as well as causing "negative work in progress". Again, that money should have been held on account of future costs in client account.

The respondent, in his own evidence, said he was a systems accountant put in to improve controls and increase efficiency at the firm of Durnford Ford. In effect he created a system under the control of one person, Mr. Ford, and included features where key accounts personnel in the firm were given only an incomplete picture of what was going on. However, the Tribunal must repeat that untrained and partly informed members of staff expressed concerns to the respondent that all was not well. The allegation was not that the respondent was complicit in the nefarious activities of Mr. Ford, but the Tribunal find that the respondent "turned a blind eye" and did not take reasonable, or any, steps to prevent serious misuse of clients' monies. In those circumstances it was entirely right that the respondent's future employment within the solicitors' profession should be controlled by the Law Society.

The Tribunal made the Order sought. In view of the fact that Mr. Ford and other partners in the firm had been the subject of a large investigation and the matters concerning the respondent had been part of a large matter, the Tribunal ordered that the respondent should pay only the costs relating to the enquiry leading to the proceedings brought against the respondent. In view of the fact that it was impossible at the conclusion of the hearing to quantify those costs, the Tribunal ordered that they be subject to taxation if not the subject of agreement.

DATED this 12th day of January 1998

on behalf of the Tribunal

J.C. Chesterton
Chairman



Findings made and
12th day of January 1998
day of January 1998