

IN THE MATTER OF STEPHEN JOHN BURTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A H B Holmes (in the chair)  
Mrs H Baucher  
Mr D. Marlow

Date of Hearing: 4th February 2003

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application had been duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London SW15 6AB on 11<sup>th</sup> December 1999 that Stephen John Burton of Northdown Road, Cliftonville, Margate, Kent (now of Broadstairs, Kent) solicitor 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The allegations contained in the statement which accompanied the application had previously been withdrawn with the consent of a Member of the Tribunal not sitting at the substantive hearing on 4<sup>th</sup> February 2003.

By a supplementary statement of Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London SW15 6AB dated 1<sup>st</sup> October 2002 the following allegations were made against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

- (a) that he failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 (the 1991 Rules) or for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (b) that contrary to either Rule 8 of the 1991 Rules or Rule 23 of the 1998 Rules he drew money out of client account other than is permitted by either of the said Rules;
- (c) that he obtained clients' funds purportedly for costs in circumstances that he knew or ought to have known he could not justify;
- (d) that he deliberately and improperly utilised clients' funds for his own purposes;
- (e) that he dishonestly misappropriated clients' funds.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4<sup>th</sup> February 2003 when Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London, SW15 6AB appeared as the Applicant and the Respondent did not appear and was not represented.

The Applicant gave to the Tribunal details for an Order for Substituted Service made by a Division of the Tribunal on 22<sup>nd</sup> October 2002. The Applicant informed the Tribunal that he had complied with that order.

At the conclusion of the hearing the Tribunal ordered that the Respondent Stephen John Burton of Broadstairs, Kent, 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 to be subject to detailed assessment unless agreed.

The facts are set out in paragraphs 1 to 36 hereunder: -

1. The Respondent, born in 1955, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At all times material to the allegations, the Respondent carried on practice on his own account under the style of SJ Burton & Co. of Westminster Bank Chambers, 160 Northdown Road, Cliftonville, Margate, Kent, CT9 2QM and subsequently from a date in early 2000 he carried on practice in partnership under the style of Burton Marsden Douglas solicitors of the same address. The Respondent had now retired from that partnership.
3. The present address of the Respondent was unknown and he was believed to have left the country.
4. Upon due notice to the Respondent an Investigating Accountant of The Law Society carried out an inspection of the Respondent's books of account commencing on 8<sup>th</sup> January 2001 and produced a report dated 4<sup>th</sup> May 2001, a copy of which was before the Tribunal.
5. A copy of the Report was sent to the Respondent by letter of 31<sup>st</sup> May 2001. The Respondent replied by facsimile dated 4<sup>th</sup> June 2001 and in more detail by letter dated

11<sup>th</sup> June 2001 including a copy of a letter from his partners dated 7<sup>th</sup> June 2001 and various copy letters and further comments.

6. The report identified four clients in respect of whose matters the Investigating Accountant had concerns. Three matters relating to two clients are set out below by way of example.

Misuse of Client Funds and Overcharging

(i) Mrs F Deceased

7. The firm (the Respondent) acted in connection with the administration of the Estate of Mrs F who died on 1<sup>st</sup> February 1999. Probate was granted on 8<sup>th</sup> April 1999 to the Executors, Mr D and the Respondent, and the net value of the Estate was said to be not exceeding £40,000. The Will provided for the payment of seven pecuniary legacies totalling £3,100 with the residue to be divided equally between Mr D and his sister, Mrs J.
8. The relevant account in the clients' ledger showed, inter alia, the following transfers from client to office bank account, apparently in respect of the firm's costs and disbursements:-

<u>Date</u>	<u>Amount</u>
01.06.1999	£1,295.08
16.06.1999	6,716.89
12.08.1999	2,547.40
08.11.1999	<u>4,288.75</u>
	<u>£14,848.12</u>

9. The following bills of costs were shown on the ledger account together with disbursements paid of £96 and copies of these bills were attached to the Report as Appendix A:-

<u>Date</u>	<u>Amount</u>
28.05.1999	£2,961.00
15.06.1999	4,954.97
10.08.1999	2,547.40
05.11.1999	<u>4,288.75</u>
	<u>£14,752.12</u>

10. Examination of the relevant client matter file showed that on 7<sup>th</sup> December 1999 the Respondent wrote to Mr D enclosing the "final" Estate account, together with a bill dated 6<sup>th</sup> December 1999 which totalled only £6,716.89. Copies of the Estate account and the bill were attached to the Report as Appendix B. It appeared to the Investigating Accountant that the bills in Appendix A were not delivered to Mr D.
11. On receipt of the Estate account, Mr D expressed concern as to the level of costs and he asked the Respondent to apply to The Law Society for a Remuneration Certificate.

In response, the Respondent initially suggested, on 6<sup>th</sup> March 2000, a reduced fee of £5,420.43 being £4,613.14 plus VAT of £807.29 and later on 17<sup>th</sup> April 2000 he issued a "revised invoice" "in a further attempt to resolve this situation" in the sum of £3,950.09 being £3,361.78 plus VAT of £588.31.

12. In the meantime the Respondent had sent his file to a legal costs draftsman and in a letter dated 3<sup>rd</sup> April 2000 addressed to the Respondent, the costs draftsman suggested a charge of £1,120 excluding VAT. The Respondent told the Investigating Accountant that he had not been happy with the costs draftsman's figure and he said that he had effectively "shot himself in the foot."
13. A Remuneration Certificate was subsequently requested and on 31<sup>st</sup> May 2000 the bill of £3,361.78 referred to in paragraph 11 above, was provisionally assessed by the OSS at £1,500. The Investigating Accountant understood that the Respondent lodged an appeal against this assessment and on appeal the Committee reduced the figure further to £500.
14. When asked to explain the transfers from client to office bank account totalling £14,848.12 and the corresponding bills totalling £14,752.12 referred to in paragraphs 8 and 9 above, the Respondent responded in a letter dated 15<sup>th</sup> February 2001 a copy of which was attached to the Report as Appendix C.
15. The Respondent said that the firm did not have a time recording system and that his bills were based on an estimate of the time spent, by reference to attendance notes and letters in and out.
16. The Investigating Accountant asked him to explain the considerable discrepancy between the bills shown on the ledger totalling £14,752.12 and the bill totalling £6,716.89 dated 6<sup>th</sup> December 1999 which was shown in the Estate account. In respect of the four bills and four sums transferred, the Respondent said:-

"I got it wrong ..... as explained previously, the file and accounts got into a muddle but everything was corrected as soon as possible after discovery and especially having regard to the amount of time the file was at The Law Society during the periods in question."

17. The Investigating Accountant noted however that although the Estate account and final bill had been prepared by 7<sup>th</sup> December 1999 the excessive transfers of costs referred to above were not rectified until several months later.
18. (ii) Mrs F - Power of Attorney

The Respondent's letter of 15<sup>th</sup> February 2001 (Appendix C) referred to work carried out for Mrs F during her lifetime under a Power of Attorney. The relevant client matter file and ledger accounts were examined and it was noted that the following bills of costs had been raised:-

<u>Date</u>	<u>Amount</u>
25.11.1996	£58.75
25.11.1996	58.75
13.03.1997	2,156.12
17.09.1997	919.73
03.01.1998	378.35
28.02.1998	315.09
22.06.1998	863.62
18.09.1998	734.37
08.12.1998	<u>822.50</u>
	£6,307.28
29.01.1999	1,321.87
25.02.1999	<u>1,351.25</u>
	<u>£8,980.40</u>

19. It is understood that until 17<sup>th</sup> September 1998, Mrs F's affairs were being dealt with at the Respondent's firm by Mrs AT under the Respondent's supervision and the Respondent in his letter (Appendix C) referred to his concerns "about the somewhat low level" of Mrs AT's charges.
20. The Investigating Accountant noted that the last two bills listed above dated 29<sup>th</sup> January 1999 and 25<sup>th</sup> February 1999 appeared to include adjustments for the alleged undercharging previously made.
21. Mrs F died on 1<sup>st</sup> February 1999 and in his letter of 15<sup>th</sup> February 2001 the Respondent stated that he had raised an interim invoice for £2,500 plus VAT on the probate file at the end of May 1999 "with the intention that it was to include work during Mrs F's lifetime."
- (ii) Mrs A
22. The firm (the Respondent) acted for Mrs A in connection with various matters under an Enduring Power of Attorney dated 18<sup>th</sup> May 2000. The client matter files indicated that the firm was first instructed in October 1999 in connection with the preparation of a Will and that Mrs A subsequently sought the Respondent's assistance in dealing with her finances.
23. Two client ledger accounts for Mrs A were examined and the following bills of costs noted:-

<u>Date</u>	<u>Costs</u>	<u>VAT</u>	<u>Total</u>
03.05.2000	£5,000.00	£875.00	£5,875.00
22.06.2000	3,500.00	612.50	4,112.50
29.09.2000	2,575.00	450.62	3,025.62
30.11.2000	<u>2,250.00</u>	<u>393.75</u>	<u>2,643.75</u>
	<u>£13,325.00</u>	<u>£2,331.87</u>	<u>£15,656.87</u>

24. The Investigating Accountant asked the Respondent how the bill dated 3<sup>rd</sup> May 2000 in the sum of £5,000 plus VAT had been calculated in view of the absence of a time recording system and the Respondent said "I think I picked a figure out of the air." He added that Mrs A was extremely demanding and that he did a lot for her. He said that he had talked to her about costs.
25. The client matter files were examined by the Investigating Accountant and as it was considered that the bills of costs appeared to be excessive in relation to the work done as indicated by the files, the files were sent firstly to a caseworker within the Remuneration Certificates Unit of the OSS and then to an independent costs draftsman for assessment.
26. The results of these assessments compared with the fees charged, excluding VAT and disbursements were as follows:-

<u>Fees Charged</u>	<u>Internal Assessment</u>	<u>External Assessment</u>
£13,325.00	£3,810.00	£5,955.00

27. The conclusion reached by both assessors was that there had been serious or gross overcharging.

(iii) Mrs H

28. The firm (the Respondent) acted for Mrs H, an elderly lady, in connection with various matters under an Enduring Power of Attorney dated 19<sup>th</sup> July 2000. The client matter files indicated that the firm was first instructed in July 2000 and the Respondent dealt with (i) the preparation of a Will and the Enduring Power of Attorney, (ii) general affairs under the Enduring Power of Attorney and (iii) the sale of Mrs H's house following her move into a residential care home.
29. The sale of the property was completed on 20<sup>th</sup> October 2000 at a price of £68,500 . The Investigating Accountant understood that the Respondent also made arrangements for the disposal or removal of the contents of the house.
30. Three client ledger accounts for Mrs H were examined and the following bills of costs were noted:-

<u>Date</u>	<u>Costs</u>	<u>VAT</u>	<u>Disbs</u>	<u>Total</u>
(i) 31.08.2000	£1,120.00	196.00	£18.50	£1,334.50
(ii) 17.10.2000	5,450.00	953.75		6,403.75
(iii) 24.10.2000	<u>1,450.00</u>	<u>253.75</u>	<u>66.75</u>	<u>1,770.50</u>
	£8,020.00	£1,403.50.	<u>£85.25</u>	<u>£9,508.75</u>

31. The client matter files were examined by the Investigating Accountant and, as it was considered that the bills of costs appeared to be excessive in relation to the work done as indicated by the files, the files were sent firstly to a caseworker within the

Remuneration Certificates Unit of the OSS and then to an independent costs draftsman for assessment.

32. The results of these assessments compared with the fees charged excluding VAT and disbursements are as follows:-

	<u>Fees Charged</u>	<u>Internal Assessment</u>	<u>External Assessment</u>
(i)	£1,120.00	£950.00	£920.00
(ii)	5,450.00	1,025.00	720.00
(iii)	<u>1,450.00</u>	<u>965.00</u>	<u>1,280.00</u>
	<u>£8,020.00</u>	<u>£2,940.00</u>	<u>£2,820.00</u>

33. The conclusion reached by both assessors was that the charges were excessive and that, in respect of matter (ii), general affairs under Enduring Power of Attorney, there had been serious or gross overcharging.
34. The Investigating Accountant requested the file in respect of Mrs W deceased but the Respondent said that the file could not be found.

Mrs W Deceased

35. The relevant account in the client's ledger was available, however, and the Investigating Accountant summarised the transactions thereon as follows:-

Assets Realised

National Savings	£20,523.80	
Financial Assurance Co	21,597.97	
Lloyds TSB	6,796.02	
Cash	226.26	
Sundry items	<u>294.43</u>	
		£49,438.48
Interest credited		<u>353.89</u>
<u>Less – Liabilities paid</u>		£49,792.37
		352.73
Funeral expenses	896.00	£49,439.64
Legal costs incl VAT	15,130.18	
Disbursements	<u>67.00</u>	
		<u>16,093.18</u>
Amount Distributed		<u>£33,346.46</u>

36. The bills of costs raised, as shown by the ledger account, were as follows:-

<u>Date</u>	<u>Costs</u>	<u>VAT</u>	<u>Disbs</u>	<u>Total</u>
19.05.1999	£2,770.00	£484.75	£7.00	£3,261.75
09.06.1999	1,465.00	256.37		1,721.37
06.07.1999	1,684.00	294.70		1,978.70
31.08.1999	956.00	167.30		1,123.30
06.09.1999	2,975.00	520.62		3,495.62
18.01.2000	1,061.48	185.76		1,247.24
31.07.2000	<u>2,050.00</u>	<u>358.75</u>	<u>—</u>	<u>2,408.75</u>
	<u>£12,961.48</u>	<u>£2,268.25</u>	<u>£7.00</u>	<u>£15,236.73</u>

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

37. In the submissions of the Applicant there were a number of cases involving either the administration of an Estate, or elderly or vulnerable clients where the Respondent had a Power of Attorney, where the Respondent had drawn money out of client account without providing a bill or intimation of costs to the relevant client. By doing this he obtained from his clients monies for costs in circumstances where he knew he could not justify those costs and he thereby deliberately and improperly utilised those clients' funds for his own purpose. As a result of those actions he dishonestly misappropriated clients' funds.
38. This was exemplified by the case of the estate of Mrs F where over £14,800 had been transferred in respect of costs with no bills delivered. The bills which were shown on the ledger account appeared to be for different dates and for different amounts than the transfers although the total was about the same.
39. The bill for £6,716.89 which was delivered was in effect taxed down to £500.
40. In the submission of the Applicant this was a very clear example of the Respondent using client money for his own purpose. It was an attempt dishonestly to appropriate clients' funds by what could only be described as gross overcharging.
41. The case of Mrs A was also an example of how the Respondent had preyed on vulnerable people. Once again there had been enormous and gross overcharging with an extremely vulnerable client. The Respondent had used his position of acting for Mrs A under a Power of Attorney.
42. The required standard of proof was beyond reasonable doubt. Whether the test applied was that contained in the case of Royal Brunei Airlines v Tan or the slightly more demanding test in the case of Twinsectra v Yardley, in the submission of the Applicant dishonesty was proved beyond reasonable doubt.
43. An experienced solicitor of many years standing did not make such transfers negligently or by mistake.
44. The Respondent's explanations in his letters went no way towards defeating the burden of proof.



45. It was quite clear that the Respondent had been acting dishonestly. The Tribunal was asked to find the allegations proved on the relevant tests and to the relevant standard.

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

46. The allegations had not been admitted and the Respondent was not present. The Respondent had provided explanations for what had occurred in various documents which were before the Tribunal and the Tribunal carefully considered those explanations in reaching a decision as to whether or not the allegations were proved. The Tribunal was satisfied from the Report and having carefully considered the relevant Rules that the Accounts' Rules breaches (allegations (a) and (b)) were proved.
47. In relation to allegation (c) a comparison of the fees charged with the various assessments referred to in the Report showed serious overcharging. This had occurred not as an isolated incident but in a number of cases. The Respondent's written explanations had been carefully noted but were not accepted. His explanations had not been supported by documentation which justified the excessive costs. By obtaining these costs in circumstances that he knew or ought to have known he could not justify the Tribunal considered that the Respondent had deliberately and improperly utilised clients' funds for his own purposes (allegation (d)). This was an experienced solicitor dealing with vulnerable clients.
48. The Tribunal was familiar with the tests for dishonesty referred to by the Applicant. In the view of the Tribunal, whichever of the tests was applied, this was a clear and unequivocal case of dishonesty. In the absence of satisfactory explanations from the Respondent the Tribunal considered that the reduction of costs from over £14,800 down to £500 in the matter of Mrs F together with the overcharging in the other matters referred to in the Report showed a clear course of dishonest conduct.
49. The Tribunal was satisfied to the required standard of proof that all the allegations had been substantiated. Solicitors had a duty of integrity towards all of their clients. They had however a particular and very real duty to protect vulnerable and infirm clients. For a solicitor to take advantage of vulnerable clients was totally unacceptable and severely damaged the reputation of the profession. In the interests of the profession and above all for the protection of the public the appropriate penalty was the ultimate sanction. The Tribunal therefore ordered that the Respondent Stephen John Burton of Broadstairs, Kent, 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 to be subject to detailed assessment unless agreed.

DATED this 19th day of March 2003  
on behalf of the Tribunal

A H B Holmes  
Chairman