

IN THE MATTER OF PETER WILLIAM SILVER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J. P. Davies (in the chair)
Mr A. G. Ground
Mr M. C. Baughan

Date of Hearing: 18th June 2002

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 (OSS) by Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke of 2 Putney Hill, Putney, London SW15 6AB on 29th January 2001 that Peter William Silver Solicitor then of Malden Road, London NW5 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-

- (i) that he failed to pay Counsel's fees as the same became due.
- (ii) that he failed to reply to correspondence from the OSS.

By Supplementary Statement of Ian Paul Ryan dated 6th August 2001 it was further alleged against the Respondent, then of 80 Fairhazel Gardens, London, NW6 3SR, that he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (iii) that he had failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998.
- (iv) that he had failed to carry out reconciliations as required by Rule 32(7) of the same Rules.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th June 2002 when Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke of 2 Putney Hill, Putney, London SW15 6AB appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Peter William Silver, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 18th June 2002 and they further ordered that he do pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless otherwise agreed.

The facts are set out in paragraphs 1 to 21 hereunder:-

1. The Respondent born in 1951 was admitted as a solicitor in 1991. At times material to the allegation the Respondent carried on practice in partnership under the style of Ronald Copeland & Co at 61 Regents Park Road, Primrose Hill, London NW1 8XD. The Respondent continued at the firm until 19th July 1995 as a Consultant. From 1st November 1994 the Respondent also carried on practice on his own account under the style of Peter Silver & Co., 171 Malden Road, London NW5 4HT.
2. Whilst at Ronald Copeland & Co solicitors and subsequently while in practice on his own account the Respondent failed to pay Counsel's fees as the same became due.
3. In a letter to the OSS dated 7th July 1998 from the clerk to Chambers at 3 Temple Gardens, London, EC4 it was stated:-

“Chambers has a large number of old cases where Counsel have been instructed by Mr Peter Silver, firstly while he was with Ronald Copeland & Co., and then after he had established his own firm. Most were legally aided criminal matters heard in the magistrates' courts, and one or two were private and civil Legal Aid matters. Counsel's fees have not yet been paid, and it appears that there may have been a particular problem with the submission of bills and fees to the Legal Aid Board”.
4. Copies of relevant correspondence and of Counsel's fee notes were before the Tribunal.
5. The Respondent was written to by the OSS in respect of this matter on 6th August 1998, 7th October 1998, 25th March 1999, 5th October 1999, 5th June 2000, 13th July

2000, 29th August 2000 and 14th September 2000 and copies of the correspondence were before the Tribunal. The correspondence also referred to a letter from the OSS dated 4th September 1998 but this was not before the Tribunal. The Respondent failed to reply to any of this correspondence.

6. Upon due notice to the Respondent the Investigating Accountant to The Law Society carried out an inspection of the Respondent's books of account commencing on 26th February 2001 and a copy of the resulting report dated 29th March 2001 was before the Tribunal.
 7. On 26th February 2001 Mr Shaw, the Investigating Accountant called at the office at 171 Malden Road and he was informed that the Respondent was not in attendance. Mr Shaw obtained a forwarding address at Asthall, Oxfordshire, together with telephone numbers. Mr Shaw then telephoned the Respondent and arrangements were made for the inspection of the books of account to commence on 1st March 2001, in Asthall.
 8. On 1st March 2001, the Respondent gave the Investigation and Compliance Officer, Mr D Shaw, details of his professional history. He said that he had practised in partnership with Mr Spencer from 14th January 1999 until Mr Spencer's death during December, 2000. The Respondent said that Mr Spencer had committed suicide on a date between 8th December 2000 and 12th December 2000 and that he had been found dead by hanging at his flat.
 9. The Respondent added that he had vacated the Malden Road office at the end of December 2000 and that he had visited this office from time to time to collect post. The Respondent admitted that he had not informed Law Society records of the change of the practice's address but that he would now do so. The Respondent said that there were still some client matter files at the Malden Road office and that he would remove these to Asthall the following weekend. When asked by Mr Shaw if he had had the post re-directed, the Respondent said that he had not but that he would now do so.
 10. The Respondent said that it was his intention to wind down the affairs of the practice and, where appropriate, to send the clients' matter files and clients' cash to either the clients concerned or other firms of solicitors.
 11. On 12th March 2001, the Respondent informed Mr Shaw that he had arranged for the firm's post to be re-directed from 171 Malden Road to Asthall. The Respondent added that subsequent to Mr Shaw's request he had informed the Records Centre of The Law Society at Redditch of his change of address by his letter dated 9th March 2001.
- Books of Account
12. The books of account were not in compliance with the Solicitors' Accounts Rules for the reasons noted below.

13. On 1st March 2001, the Respondent said that Mr Spencer had been the partner who had the day-to-day conduct of the maintenance of the firm's accounting records. The Respondent explained that as a consequence of Mr Spencer's death, the maintenance of the firm's accounting records had fallen into arrears. The Respondent informed Mr Shaw that the latest reconciliation that had been performed between clients' ledger balances and client account bank statements was at 31st December 2000. He said, however, that this was not available for inspection due to a problem in copying computer files from the Malden Road office computer to his computer in Asthall.
14. The latest available reconciliation produced for inspection on 1st March 2001 was at 31st January 2000.
15. The Respondent said that recently there had been relatively few transactions and that accordingly it would take him a few days to bring his accounting records up to date. Accordingly, it was agreed to postpone the inspection until 12th March 2001.
16. Mr Shaw visited Mr Spencer in Asthall on 12th and 13th March 2001. No list of balances as at 31st January 2001 was produced for inspection. The latest list of balances available for inspection remained that as at 31st January 2000. A number of printouts of the client ledger accounts in the form of Microsoft Excel spreadsheets were produced for inspection. Mr Shaw was also provided with a number of client ledger accounts in the form of Microsoft Excel spreadsheets on a compact disc.
17. No client account bank reconciliation as at 31st January 2001 was produced for inspection. A client account cashbook in the form of a Microsoft Excel spreadsheet was produced for inspection and Mr Shaw was given a copy of this spreadsheet on a floppy disc. However, this spreadsheet only covered the period 1st November 1999 to 31st January 2001 and when it was compared to the client account bank statements by Mr Shaw it was found to be incomplete. An examination of the client account bank statements by Mr Shaw revealed a substantial number of transactions for the period April 1999 to October 1999.
18. Mr Shaw also established that a number of client bank account transactions which had been recorded on the Microsoft Excel client cash book spread sheet had not been posted to the relevant accounts in the clients' ledger and examples of these were set out in the report.

Liabilities to Clients

19. In view of the foregoing, it was not possible for Mr Shaw to compute the Respondent's liabilities to clients and no opinion could be expressed as to whether or not sufficient funds were held on client bank account to meet his liabilities to clients.

Client Bank Account Payments to A G plc - £1,634.22

20. In addition to the unposted transactions referred to above, during the period 14th March 2000 to 15th January 2001 client bank account was charged with one payment of £194.02 and ten payments of £144.02, totalling £1,634.22.

21. Mr Shaw pointed out that these payments appeared to be direct debits and he asked the Respondent what they were in respect of. The Respondent said that he did not know and he agreed that they appeared to be direct debits. The Respondent said that as far as he was aware these payments had not been allocated to any individual account in the clients' ledger and that he would look into the matter.

The Submissions of the Applicant

22. An order for substituted service had been made by the Tribunal in February 2002. Copies of relevant medical reports were before the Tribunal. The Respondent had now seen and understood the documentation and had admitted the allegations.
23. The fee notes referred to in allegation (i) all related to legally aided matters. In the magistrates court if for any reason a solicitor's bill was not submitted to the Legal Aid Board or was submitted without Counsel's fees appended then Counsel would not be paid. The likelihood in this case was that Counsel's fee notes had not been sent with the solicitor's bill. The obligation to pay Counsel's fees then became that of the solicitor.
24. The Respondent had accepted that he had not replied to the correspondence referred to in allegation (ii).
25. The allegations contained in the Supplementary Statement were in the submission of the Applicant more serious.
26. It was clear that there had been some disarray during the relevant period as demonstrated by the fact that Counsel's fees had not been dealt with and correspondence had not been replied to. This had become worse however and the Investigating Accountant had been unable to compute liabilities to clients.
27. It was clear that although there was an element of disarray the situation had been greatly exacerbated and aggravated by the suicide of the Respondent's partner in December 2000. The inspection was after that date.
28. It was accepted by the Applicant that the situation had become worse because of the personal and professional difficulties that resulted from that death.
29. The Respondent had then become physically and psychiatrically unwell and had been unable to deal with the allegations until today's hearing.
30. These were serious matters and there had been clearly been confusion and disarray but the Applicant accepted that factors may have prevented the Respondent from dealing with matters as he would otherwise have done.
31. The Respondent had been a respected and well known criminal practitioner who had been involved in a very high profile case. Despite that he had become so unwell that he was never able to put his own bills in.

32. He had high professional standing but had become unwell and events had spiralled out of control.
33. No dishonesty was alleged against the Respondent.

The Submissions of the Respondent

34. The Respondent's practice had been intervened and at that time there had been no ongoing matters, it was just a question of dealing with matters arising from the closing of files.
35. The Respondent had conducted a criminal practice and had been on seven duty rotas. This left him very little time. Having put various systems in place, given his work load, he had difficulty in submitting his accounts. This had led to a condition being imposed on his Practising Certificate that he should work in partnership.
36. He had gone into partnership with Mr Spencer in January 1999, the basis of the partnership of being that that were still considerable fees due to Peter Silver & Co.
37. This had arisen from the system of payment in Legal Aid matters which the Respondent submitted would not be accepted by any other profession. Bills would be put in and there would then be an inordinate wait and fees could be arbitrarily reduced. Most practitioners would accept the reduction rather than spend further time arguing the case before a Taxing Master.
38. The Respondent had been running down the firm of Peter Silver & Co and had not been accepting new cases. The agreement with Mr Spencer was that the Respondent would fund the firm of Silver Spencer out of the fees due to Peter Silver & Co, and would pay the staff until Silver Spencer could stand on its own feet.
39. The Respondent had been waiting for some £9,000 worth of fees on a large case and had discovered that these had been sent to Silver Spencer. This had not been the agreement with Mr Spencer but the latter had said that he had to take that action in order to pay Chambers and had said to the Respondent that without Mr Spencer the Respondent would have to stop practising.
40. In October 1999 there had been difficulties between the Respondent and Mr Spencer after Mr Spencer had criticised the Respondent for taking a short amount of time off work following the death of his mother.
41. Mr Spencer had agreed to continue to deal with Chambers and had told the Respondent that everything was in hand.
42. The Respondent had funded Peter Silver & Co from his own personal account and overdraft. The agreement between the partners was that as fees came in certain sums would go off to pay the overdraft.

43. Mr Spencer had assumed the day to day running of the practice as the Respondent was often up all night on the duty solicitor schemes and was in court almost daily.
44. The Respondent had checked on the accounts occasionally and they seemed alright.
45. The matters referred to in the accountant's report all related to Mr Spencer's files. The Respondent had done no conveyancing.
46. Mr Spencer had begun to drink heavily. He had been drunk in the office and had been challenged by the Respondent.
47. The Respondent had been able to see that the appropriate accounting procedures had been carried out in relation to the criminal practice and in so far as he understood it the conveyancing accounts seemed alright. The Respondent had then received a statutory demand from his bank demanding repayment of his total overdraft.
48. The Respondent had started going through matters and had discovered that money had not been transferred to his bank and that there was correspondence from the bank and from others which the Respondent had not seen.
49. The Respondent had told Mr Spencer that he wanted the partnership to end. He had had very little further dialogue with Mr Spencer because of the latter's drink problem.
50. In December 2000 the Respondent had received a telephone call while at court to say that Mr Spencer was in hospital having thrown himself off the tube platform. He was uninjured.
51. The Respondent told Mr Spencer that if he took on any more work the Respondent would put the matter in the hands of The Law Society because of Mr Spencer's attitude and because of complaints from clients due to his drunkenness.
52. The Respondent had gone through the files and had found no nasty surprises in relation to client funds but had found some in relation to the office account. The Respondent had earned 80% of the fees but Mr Spencer had been taking money out contrary to the agreement. When challenged Mr Spencer had not been forthcoming.
53. It appeared that there was a vast amount of correspondence which the Respondent had not seen.
54. On the day of the tube incident the Respondent had challenged Mr Spencer and had said that it was the first time that the Respondent had seen him in the office sober for two weeks and the first time he had been able to talk to him. They agreed to meet again the next day.
55. By this time the Respondent was completely physically exhausted and had stopped his duty work. He had been offered a Legal Aid franchise but had declined it because of the serious doubts he was starting to have regarding Mr Spencer.

56. Although Mr Spencer had known where the Respondent was on the day of the tube incident he had phoned The Law Society to say that the Respondent had abandoned his practice and that Mr Spencer was going home.
57. Mr Spencer had not met the Respondent the following day as agreed and did not answer calls. A few days later Mr Spencer was found hanged.
58. The Respondent discovered correspondence hidden in various files which had not been seen by the Respondent and which caused him untold problems.
59. Fees due to the Respondent had been used by Mr Spencer to fund alcohol and drugs.
60. By January 2001 the Respondent had been physically and mentally unable to cope with anything and became seriously depressed.
61. He had been in hospital for a month in June 2001 with serious physical problems.
62. The Respondent had not practised since the beginning of 2001. He had not applied for a Practising Certificate and had no plans to do so.
63. The Respondent had borrowed funds to overcome the statutory demand from the bank. He was not working and his financial position was somewhat parlous.
64. The Respondent was still receiving high doses of antidepressant medication which gave him a continuing sense of torpor. The Respondent hoped eventually to seek useful employment but not in the legal profession.
65. The stress of the high profile case referred to by the Applicant had been such that a psychiatrist had considered that the Respondent might be suffering from post traumatic stress syndrome. The Respondent would carry some images from that case for the rest of his life.
66. The Respondent had to admit the charges. But for the intervention of Mr Spencer and his problems the Respondent had intended in early 1999 to deal with Counsel's fees. He had been led to believe that the matters were being dealt with.
67. Had the Respondent seen the OSS correspondence which was hidden from him he would have seen that something was amiss.

The Findings of the Tribunal

68. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
69. The Tribunal noted that no dishonesty had been alleged against the Respondent. Non payment of Counsel's fees and failure to reply to correspondence from the Regulatory body were serious matters but the Tribunal had noted the explanations given by the Respondent in the respect of those matters. The Respondent had also allowed his

accounts to fall into disarray but the Tribunal noted the exceptional and tragic circumstances relating to the Respondent's then partner. While this did not exonerate the Respondent from his failure to take a more active role in the running of his practice it was clear that circumstances beyond his control had greatly exacerbated matters. The Respondent remained unwell and was not presently fit to practise as a solicitor.

Previous Appearances before the Tribunal

Hearing on 7th January 1999

70. On 7th January 1999 the Tribunal found substantiated an allegation that the Respondent had been guilty of conduct unbecoming a solicitor in that he had failed in accordance with the provisions of Section 34 of the Solicitors Act 1974 and the Rules made thereunder to deliver Accountant's Reports in respect of his practice as a solicitor for any period since the formation of his practice in October 1994.

71. The members of the Tribunal said they considered that to be a serious matter particularly as the failure to file Accountant's Reports had continued for four years. The Tribunal accepted that the Respondent had encountered some difficulties but also considered that some of his difficulties were of his own making. The Tribunal considered it imperative that the Respondent should not repeat his failure to file Accountant's Reports. To mark the seriousness with which the Tribunal regarded the Respondent's failure the Tribunal ordered that he pay a fine of £3,000 and the costs of the application and enquiry.

Hearing on 23rd November 1999

72. On 23rd November 1999 the Tribunal found the following allegations to have been substantiated against the Respondent, namely that he had been guilty of conduct unbecoming a solicitor in the following circumstances:-

- (i) he had been guilty of unreasonable delay in paying the proper costs of an expert whom he had instructed on behalf of a client;
- (ii) he had failed to deal promptly with correspondence from the OSS.

73. The Tribunal in November 1999 accepted the Respondent's explanations but agreed with the Applicant that the Respondent had been the author of his own misfortune. It was perhaps his ability to make assumptions and not to check the accurate position which had brought him before the Tribunal on this and the earlier occasion. A solicitor had to respond promptly and fully to letters addressed to him by his own professional body. The Tribunal noted that the Respondent had entered into partnership with another solicitor which would free him of some of the administrative burdens of practice. The Tribunal recognised that the lot of a criminal defence lawyer whose clients were legally aided was not an easy one. That did not, however, excuse a solicitor from a failure to fulfil his professional obligations. In all of the circumstances of this matter the Tribunal considered that a reprimand was appropriate and it ordered that the Respondent pay the Applicant's costs. The Respondent might not expect to be treated so leniently if he had further allegations substantiated against him before the Tribunal in the future.

74. At the hearing on 18th June 2002 the Tribunal noted the previous appearances and accepted that, tragically, entering into the partnership referred to by the Tribunal in November 1999 had not solved the Respondent's difficulties indeed in had exacerbated them and the Respondent's health had broken down. The Tribunal considered that the appropriate penalty was an indefinite suspension from practice.
74. The Tribunal ordered that the Respondent Peter William Silver solicitor be suspended from practice as a solicitor for an indefinite period to commence on 18th June 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless otherwise agreed.

DATED this 24th day of September 2002

on behalf of the Tribunal

J. P. Davies
Chairman