

IN THE MATTER OF RICHARD CHARLES COOPER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. L. N. Gilford (in the chair)
Mr. D. J. Leverton
Mr. G. Fisher

Date of Hearing: 19th March 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 Rosemary Jane Rollason solicitor of Field Fisher Waterhouse 35 Vine Street, London EC3N 2AA that Richard Charles Cooper of Stockton Brook, Stoke-on-Trent, 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 against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

- (i) in the course of an inspection of the books of account of Beswick Moon in February 1997, there was found to have existed on the firm's client bank account a cash shortage of £583,000.00;
- (ii) that in the course of acting in connection with property transactions, he acted for lender and borrower without advising the lender to take independent legal advice;

- (iii) that he further failed to register charges with the Land Registry for the benefit of the lender client;
- (iv) that he failed to ensure that the loans had been secured against the relevant properties in accordance with the instructions of the lender clients;
- (v) that he gave an undertaking which was not complied with;
- (vi) that he utilised monies in respect of a particular transaction for another purpose without seeking instructions from the lender client;
- (vii) that in several transactions, the deposit cheques were not paid into client account but destroyed or given direct to the client;
- (viii) that he failed to supervise or adequately supervise a secretary who dealt with conveyancing transactions;
- (ix) that in acting for a receiver, he failed to ensure that the deposit cheque was paid into client account; and
- (x) that in several transactions he acted for both vendor and purchaser, in breach of Practice Rule 6.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19th March 2002 when Rosemary Jane Rollason solicitor and partner in the firm of Field Fisher Waterhouse of 35 Vine Street, London EC3N 2AA appeared as the Applicant and the Respondent was represented by Arnold Rosen solicitor of Arnold Rosen & Co, 199 Piccadilly London W1J9 HA.

The evidence before the Tribunal included the admissions of the Respondent to allegations (ii), (v), (vii), (viii), (ix) and (x).

At the conclusion of the hearing the Tribunal ordered that the Respondent Richard Charles Cooper of Stockton Brook, Stoke-on-Trent, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 19th March 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 agreed.

The facts are set out in paragraphs 1 to 22 hereunder

1. The Respondent born in 1951 was admitted as a solicitor in 1976 and his name remained on the Roll of Solicitors.
2. At all material times, the Respondent carried on practice in partnership under the style of Beswick Moon. The firm had offices at 27-28 Tower Square, Tunstall and in Kidsgrove, Hartshill and Hanley, all in Stoke-on-Trent, Staffordshire.
3. The Respondent was the senior partner at the firm's Tunstall office. Following the investigation of these matters, he retired from the partnership on 18th February 1997.

The Respondent subsequently, in March 1997, joined the Smith Partnership Solicitors of 25 Wardwick, Derby. The Respondent subsequently retired from practice.

4. On 6th December 1996, the Chief Investigation Accountant for the OSS was appointed to inspect the books of account of Beswick Moon under Rule 27 of the Solicitors' Account Rules 1991. The inspection was carried out by the Investigating Accountant, Miss Weatherson, commencing on 10th February 1997, at which time Mr Cooper was absent from the office on holiday. A copy of the inspection report and enclosures was before the Tribunal.
5. The remaining partners advised Miss Weatherson that the firm was a general practice assisted by staff of 51, including 6 assistant solicitors. The books of account in respect of the firm's Hanley Office, and of the Tunstall and Kidsgrove offices combined, were both found to be in compliance with the Solicitors' Accounts Rules as at 31st December 1996. However, Miss Weatherson identified concerns regarding a number of property transactions in which the Respondent had acted for a property development company, AB Limited, which in the opinion of Miss Weatherson had resulted in a cash shortage, rectified prior to the inspection, of £583,000.00.
6. Miss Weatherson interviewed the Respondent about her concerns on 4th March 1997. He told her that AB Limited had dealt in the acquisition, renovation and subsequent disposal of properties. A number of the property acquisitions were financed by loans from Mr AB's personal acquaintances.
7. The Respondent said that he had "technically" acted for these lenders, in that he had dealt with the loans which had been paid into the firm's client bank account. He admitted that he had not advised the lenders to take independent legal advice regarding the loans.
8. The Respondent stated that no formal loan agreements had been drawn up but said that "the understanding would have been that the advance would be secured by way of a first charge" on the property to be acquired.
9. The Respondent admitted to Miss Weatherson that, except in one or two cases, none of the charges had in fact been registered at the Land Registry and that therefore, having released the funds to the benefit of Mr A B, he had failed to comply with the client's implied instructions as "the client would have expected to have a first charge in due course and did not get one".
10. Miss Weatherson considered this gave rise to a shortage of funds on client's bank account of £583,000.00, made up as follows:-

<u>Name of Lender</u>	<u>Number of Advance Made</u>	<u>Total Advances Made</u>
1. Mr & Mrs C	8	£200,000.00
2. K Limited	13	325,000.00
3. Mr H	3	<u>58,000.00</u>
		<u>583,000.00</u>

11. The Respondent stated that claims had been made against the practice regarding these matters, which had been dealt with by the firm's insurers.
12. During their own investigations, the other partners in the firm found that, in the case of the loan by Mr and Mrs C in the sum of £200,000.00, in 1993, the Respondent had given a written "comfort" letter to Mr and Mrs C stating that "in the event that the loan or any part of it remains unpaid or any losses attributable to our error are incurred by you, the firm will accept responsibility in full". The other partners were unaware both that the Respondent had given this undertaking and that it had been taken account of by insurers in settling the claim.
13. In her report, Miss Weatherson specified the details of one transaction involving a loan of £25,000.00 by K Limited for the purchase of a particular property in Smallthorne, by AB Limited. The Respondent admitted the amount of the loan was applied for the benefit of AB, although ultimately the proposed purchase transaction did not take place. He told Miss Weatherson when questioned "with the benefit of hindsight, I am aware that the funds were used in a manner incompatible with the understanding or instructions from K".
14. During her inspection, Miss Weatherson had reviewed 7 client files relating to the disposal of properties by AB Limited or, post 1995, its receivers. In each case, the deposit cheque received from the purchasers' solicitors had not been paid into client bank account and the cheques had either been destroyed or given directly to Mr AB. Further, in each case, the purchasers' solicitors' costs had been deducted from the purchase consideration remitted to Beswick Moon. When asked by Miss Weatherson if he had received the leaflet "Property Fraud II Warning" issued by the Law Society in 1993, the Respondent said that he had not read it.
15. The Respondent told Miss Weatherson that, in each case, he was not aware of the details of the transaction as the matter had not been dealt with by him personally, but by his legal secretary. She held no legal qualification, but had dealt with AB Limited property transactions on a day to day basis. The Respondent admitted he gave no supervision to the secretary, but expected her to come and see him if there was a problem. He accepted he had not reviewed these files upon completion and did not have full knowledge of how the secretary was dealing with these conveyancing matters. He stated "That's my fault, as I am supposed to supervise her. I haven't been proactive enough".
16. In the report, Miss Weatherson set out the details of one such transaction, the sale of a property in George Avenue. In this case, the firm (the Respondent) acted for the receivers of AB Ltd and, upon receipt of a deposit cheque from the purchaser's solicitors, failed to pay the cheque into the firm's client bank account, and it remained on the client matter file at the inspection date.

AB Limited Property Sales – Acting for Vendor and Purchaser

17. Miss Weatherson reviewed 7 client matter files covering a period from November 1990 to March 1991 in connection with the sale of properties by AB Limited. In each of the cases, the firm had acted for the purchaser and the lender and the vendor

respectively, representing a breach of Practice Rule 6. The Respondent had acted for the vendor through the firm's Tunstall office and a conveyancing clerk had acted for the purchaser under the supervision of Mrs C, a partner at the Hartshill office.

18. Mr D, a partner in the firm, told Miss Weatherson that the partners accepted that there had been insufficient supervision in respect of these matters.
19. On 27th March 1997, Miss R of the OSS wrote to the Respondent requiring his explanation in connection with the allegations. The Respondent replied by a letter dated 7th April 1997 in which he admitted the allegations. He submitted further letters dated 31st October and 28th November 1997. Copies of this correspondence were before the Tribunal.
20. A copy of the resolution of the Compliance and Supervision Committee dated 10th December 1997 authorising the proceedings was before the Tribunal.
21. In September 1998, the OSS were informed by the Respondent's then firm, the Smith Partnership, that he was suffering from a serious illness and would be undergoing surgery and subsequent treatment. It was requested that the disciplinary proceedings should be suspended whilst the Respondent underwent treatment. The OSS agreed to this request. The proceedings were therefore held in abeyance over the period of the next 18 months, with interim reports on progress being provided by the Respondent's firm. These included reports from the Respondent's treating consultant expressing concern about the risk the Respondent's health should he face the disciplinary proceedings.
22. Further information received in May 2000 from the Respondent's treating consultant indicated that he was currently free from any recurrence of his illness, although there remained a risk in the first two years following his treatment. The view was expressed that 'any extra stress was not to his best interest'. The OSS reviewed the matter in the latter half of 2000. It was decided that the matter should no longer be held in abeyance both in the interest of the public and the Respondent himself. It was therefore decided that the proceedings should be progressed.

The Submissions of the Applicant

23. The report of the Investigating Officer indicated that the Respondent had accepted the shortage of funds on client bank account but this was disputed by his representative.
24. It was not alleged that the Respondent had benefited from that money. It was a technical deficit in that monies had been withdrawn and applied for the benefit of AB in contravention of clients' instructions that a first legal charge should be taken on the properties in question.
25. It had been accepted in the Respondent's proof of evidence that those instructions had been given. The Respondent's letter to Mr C which was before the Tribunal also acknowledged it.
26. The money had been replaced by the Solicitors Indemnity Fund. The Report described this as rectification.

27. The Respondent would say that these were rolling transactions.
28. The OSS had written to the Respondent on 27th March 1997 requiring explanation relating to the following matters:-
- “a) That you acted for lender and borrower but you had not advised the lender to take separate independent legal advice.
 - b) That you failed to register charges with the Land Registry for the benefit of the lender client.
 - c) That you failed to ensure the loans had been secured against the relevant properties in accordance with the instructions of the lender clients.
 - d) That you gave an undertaking which was not complied with.
 - e) That you utilised monies in respect of a particular transaction for another purpose without seeking instructions from the lender client.
 - f) That in several transactions the deposit cheque was not paid into client account but destroyed or given direct to the client.
 - g) That you failed to supervise or adequately supervise an employee Mrs. D who was tasked with dealing with conveyancing transactions.
 - h) That in acting for a receiver, the deposit cheque was not paid into client account but into a separate account.
 - i) That in several transactions you acted for both vendor and purchaser in breach of Practice Rule 6.
 - j) That you failed to advise a lender client that insufficient purchase monies were received from the borrower.”
29. The Respondent had replied in a letter dated 7th April 1997 commenting as follows. In relation to (a):-
- “The lender and borrower were persons or companies closely acquainted with each other, who had dealt with each other in the past on many occasions over a long period of time and the persons concerned knew each other on a personal and friendship basis. I feel sure that had it been suggested that independent advice be given, the clients would not have considered it necessary. However I fully accept that the offer of independent advice should have been given”.
29. In relation to (b) and (c):-
- “I accept that this clearly should have been done. However, I should point out that I did not have the day to day conduct of these files although I was the supervising Solicitor for the relevant department. There was a high volume of

work being done by Mrs D, the fee earner concerned. With the benefit of hindsight, it is clear that I should have been proactive in supervision, rather than reactive”.

30. In relation to allegation (d):-
“I can only accept that this was an error of judgment on my part which I profoundly regret”.
31. In relating to allegation (e) equivalent to allegation (vi):-
“The monies referred to related to a lender who was closely acquainted with and a personal friend of the borrower. Notwithstanding this I would have assumed and accepted that in the course of dealing with such matters the fee earner concerned would have acted only in accordance with instructions received. Again, I did not have the day to day conduct of the files, but must accept responsibility as the head of that department”.
32. The Applicant had noted the response of the Respondent to the Rule 4 statement in relation to the legal charges. He had said that charges were not legally possible. In the submission of the Applicant if that was the case it raised the question of why the lenders had not been so advised. Such advice might have affected their decision as to whether or not they wished to make the loans.
33. Allegations (vii) to (ix) which the Respondent had admitted concerned the lack of supervision by the Respondent.
34. The Respondent had said to the Investigation Accountant that if he had been aware of the details of the deposit cheque he would not have considered it to be a normal transaction and would have wanted to know what was going on. The crux of this matter was that his secretary was not able to identify suspicious features or matters where further enquiry was appropriate.
35. The Tribunal’s attention was drawn to the relevant Principles of conduct set out below:-

Principle 3.01 – Responsibility for Supervision of Staff

A solicitor is responsible for exercising proper supervision over both admitted and un-admitted staff.

The commentary provides that “a solicitor cannot escape responsibility for work carried out by the firm by leaving it entirely to his or her staff, however well qualified”.

Principle 12.11 – Care and Skill

A solicitor who has accepted instructions on behalf of a client is bound to carry out those instructions with diligence and must exercise reasonable care and skill.

Principle 12.15 – Client to be kept informed

A solicitor is under a duty to keep the client properly informed and to comply with the reasonable requests from the client for information concerning his or her affairs.

Practice Rule 1

A solicitor shall not do anything in the course of practising as a solicitor or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:-

- a. The solicitor's independence or integrity
- c. The solicitor's duty to act in the best interest of the client
- d. The good repute of the solicitor or the solicitor's profession
- e. The solicitor's proper standard of work

Principle 15.04 – Acting for Seller and Buyer

A solicitor must not act for seller and buyer on a transfer of land or of an interest in land or for a lender and a borrower in a private mortgage unless he or she is able to do so in compliance with Rule 6 of the Solicitor's Practice Rules 1990.

- 36. These remained the principles of general application in the matters before the Tribunal.
- 37. In a letter dated 28th November 1997 to the OSS the Respondent had written:-
 "I hope that when considering this matter the committee will accept that although due to pressure of work serious errors have been made, I have not behaved in an dishonest manner. I have made no personal gain...".
- 38. In relation to allegations (i) - (vi) the Applicant submitted that she had clarified the issue in relation to the disputed allegations.
- 39. These allegations related to the Respondent's failure properly to advise clients or act on their instructions. The money was misused in that it was not applied in accordance with the instructions.
- 40. If legal charges were not possible then the client should have been advised accordingly. The money had been at risk and unsecured.
- 41. In relation to allegations (vii) – (ix) Mr AB was clearly a client of the Respondent. The matter was dealt with in his name. The Respondent's secretary had no legal qualifications and the Respondent had admitted that he did not know how she was handling the matters.

42. The Applicant asked whether the Respondent was even reading incoming post. The secretary was clearly not able to exercise judgement so as to recognise features of concern.
43. The Respondent had admitted allegation (x).

The Submissions of behalf of the Respondent

44. The Respondent denied allegations (i), (iii), (iv) and (vi).
45. In relation to allegation (v) the Respondent had written the letter out of sympathy for Mr C who was about to undergo open heart surgery. The Respondent had therefore sent a “comfort letter”. It was not appropriate for the Respondent’s representative to resilie from the solicitor’s good natured act.
46. The annual report of the Tribunal said that special care was needed with elderly or vulnerable clients.
47. The Solicitors Indemnity Fund had repaid the money probably because the firm had lost its nerve and had failed to address the nature of the transactions.
48. Allegations (vii) – (x) were accepted. The lady in question should have never been put into that position of responsibility.
49. The Tribunal was asked to consider the Respondent’s proof of evidence and the Response to the Rule 4 statement together with the bundle of testimonials in support of the Respondent and the medical report.
50. On advice the Respondent was not present before the Tribunal. The Respondent was ashamed that he had let his clients down.
51. It was submitted that the three clients in question were conducting a business via a solicitor’s client account. The firm had failed to supervise events at this branch office. The client account was being used as a form of revolving credit unsecured by any form of debenture.
52. All the three clients had to do was to put in a deposit which was then made available to AB to purchase a property.
53. There was a confusion of conveyancing and banking practice at the firm which with hindsight must be criticised. In his response to the Rule 4 statement the Respondent had written:-

“The SIF admitted liability based on the failure of the Respondent’s firm to register legal mortgages against investment properties in accordance with instructions received from the investing parties. There was no shortfall of £583,000, or at all, on the firm’s Client Account”.
54. The monies had been used with the consent of the clients. The clients had been entirely content to back AB.

- 55 The Respondent had further written:-
“The SIF made settlement direct with the solicitors acting for the investors and the Respondent was not privy to such negotiations for settlement. There was money which investors speculated and lost on the property market and which would have been lost, or largely lost, whatever legal arrangements had been made”.
56. Once the clients had begun to lose money they were aggrieved.
57. In relation to allegations (iii) and (iv) it was submitted that the creation of legal charges was impossible of performance as set out in the Respondent’s proof of evidence and response.
58. Allegations (iii) and (iv) should be looked at together.
59. In relation to allegation (vi) it was submitted that the allegation was incorrect. Letters were sent to the lenders seeking consent to make the transfer. There was a working relationship between the three client investors and the solicitor and it was inconceivable that he could make the transfers without consent.
60. The report of the Investigation Accountant did not come to terms with the wishes of the clients and why they had deposited monies in the client account in the first place. The report had failed to recognise the nature of the transactions and this had led to the Investigation Accountant saying that there was a shortage on client account.
61. In recent correspondence the Applicant had said that there had been a technical breach in relation to the alleged shortage because the Respondent had allegedly not acted in accordance with instructions and she had enclosed details of a telephone call dated 6th March 1997. The notes of the telephone call made by Miss Weatherson were not admitted by the Respondent. The notes were not referred to in the Investigation Accountant’s report made shortly after the call.
62. The Respondent had admitted more than he should have done on behalf of clients in respect of whom he felt guilty.
63. The Respondent had been foolish doing something with his client account which should have been done by bankers. The matter had not been alleged otherwise than as foolishness.
64. The allegations were of unbecoming conduct which would usually lead to a fine or suspension.
65. The Respondent was completely retired and suffered from ill health.
66. The three clients had enjoyed profits while the market was rising but had escaped totally free from losses when the downside occurred.
67. The Respondent and the Respondent alone had accepted responsibility for what had happened at the branch office.

68. The allegation by the Applicant that the clients were not advised and might not have proceeded with the loans if they had been advised was a matter of evidence.
69. The Respondent did not resile from the comfort letter.
70. There had not been a true deficit on client account.
71. The Respondent had put forward lengthy submissions in writing.
72. The presence of the Respondent's representative was a token of the respect in which the Respondent held the profession.
73. The Respondent was ashamed. There had been times when he had taken too much responsibility on himself. If he had turned to his partners the report might have been of a different kind.
74. There had been much foolishness on the part on the Respondent but no dishonesty.

The Findings of the Tribunal

The Tribunal found allegations (ii), (v), (vii), (viii), (ix) and (x) to have been substantiated indeed they were not contested.

In relation to allegation (i) no evidence of ledger accounts for the lenders had been put before the Tribunal. The Applicant had said that there was a technical breach in that monies had been applied otherwise than in accordance with the clients' instructions. The Tribunal accepted that the Respondent had breached his duty to his clients but were not satisfied that his failure to protect funds by failing to obtain security could properly be described as a shortage on client account nor that the meeting of the clients claims by the Solicitors Indemnity Fund on the basis of negligence could properly be described as rectification of a shortage. The Tribunal did not find allegation (i) proved.

In relation to allegation (iii) the Tribunal considered that the Respondent should have registered the charges or advised his clients that this was not possible. In relation to allegation (iv) while there was no evidence of the instructions before the Tribunal the Respondent had admitted that the clients would have expected the loans to be secured and in his letter dated 7th April 1997 the Respondent had written:-

“I accept that this clearly should have been done”.

The Tribunal found allegations (iii) and (iv) to have been proved. In relation to allegation (vi) and the property in Smallthorne the proposed purchase transaction did not take place and the Respondent had accepted that the funds were used in a matter incompatible with the understanding or instructions from the client. A draft charge had been drawn up in relation to the first property but a different property had been bought and the money should never have been handed over to the builder client. The Tribunal found allegation (vi) to have been proved.

The Tribunal had considered the submissions, the response of the Respondent to the Rule 4 statement and his proof of evidence and had noted the testimonials in support of the Respondent and the medical evidence.

The Tribunal regard this matter as serious. The Respondent had shown a total disregard of his duties to his clients. There had been no so supervision whatsoever of a totally unqualified member of staff. The matters had been handled in such a way that there was no protection for the loan made by the lender clients and as a result there had been massive claims on the Solicitors Indemnity Funds.

The matter had not been put on the basis of dishonesty and the Tribunal had not found dishonesty on the part of the Respondent nevertheless he had abrogated the responsibility owed by a solicitor to his clients and the Tribunal considered that the appropriate order was one of indefinite suspension.

The Tribunal therefore ordered that the Respondent Richard Charles Cooper of Stockton Brook, Stoke-on-Trent, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of March 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 agreed.

DATED this 11th day of June 2002

on behalf of the Tribunal

L.N. Gilford
Chairman