

IN THE MATTER OF PAUL HOWARD EMANUEL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr. L. N. Gilford (in the chair)  
Mr. A. Gaynor-Smith  
Mr. G. Fisher

Date of Hearing: 26th February 2002

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## FINDINGS

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

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An application was duly made on behalf of the Office for the Supervision of Solicitors (OSS) by David Elwyn Barton solicitor and partner in the firm of Messrs Whitehead Monckton of 72 King Street, Maidstone, Kent, ME14 1BL on the 17<sup>th</sup> April 2001 that Paul Howard Emanuel of Shepherds Hill, London, N6 (a 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.

On the 4<sup>th</sup> October 2001 Mr Barton made a supplementary statement containing further allegations. The allegations below are those contained in the original and supplementary statements. At the opening of the hearing Mr Barton indicated that he would not proceed with allegation 2 (c) in the supplementary statement.

The allegations were that the Respondent had:-

- a) dishonestly, alternatively improperly used clients money for his own purposes.
- b) has acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors

Accounts Rules 1998) he has drawn from clients account monies other than in accordance with the said rules and utilised the same for his own benefits.

- c) the Respondent compromised or impaired his duty to act in the best interests of his client VH.
- d) the Respondent failed to deal promptly with communications relating to his said client.
- e) withdrawn.
- f) failed to comply with the terms of an undertaking given to Freeman Box solicitors on 12<sup>th</sup> December 2000 by which he stated that he would be sending them the following day a letter and a cheque, the letter having already been drafted.
- g) the Respondent had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS, when David Barton solicitor and partner in the firm of Whitehead Monckton, 72 King Street, Maidstone, Kent, ME14 1BL appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent save that he did not admit that he had been dishonest. The Respondent had brought with him two clients who were prepared to give evidence as to the Respondent's good character. The Tribunal noted with thanks their attendance but it was decided that they would not give formal evidence. Two gentleman who represented the Respondent's recent employers also attended the Tribunal hearing to offer him support. One of them, Mr Onokaie gave evidence as to the Respondent's character and the fact that his firm would be prepared to employ the Respondent should that be possible.

At the conclusion of the hearing the Tribunal Ordered that the Respondent Paul Howard Emanuel of Shepherds Hill, London, N6, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 26<sup>th</sup> day of March 2002 and they further Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £9,100.56.

The Tribunal ordered that the period of suspension come into force one month after the date of the Order to give Mr Emanuel's prospective employers the opportunity of making an application to the Law Society for consent to employ him.

The facts are set out in paragraphs 1 to 29 hereunder:-

1. The Respondent, born in 1951 was admitted as a solicitor in 1975. At the material times he practised under the style of P H Emanuel and Co at Bisham House, 2 Bisham Gardens, Highgate, London N6 6DD as a sole practitioner.
2. Following notices duly given an Investigation Accountant of the OSS attended at the Respondent's offices to inspect his books of account. The inspection began on 12<sup>th</sup>

June 2000. The Investigation Accountant's Report dated 24<sup>th</sup> October 2000 was before the Tribunal.

3. That report revealed that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules.
4. A list of liabilities to clients as at the 31<sup>st</sup> May 2000 was produced for inspection. The items on the list were in agreement with the balances on the clients ledger and a comparison of its total, after adjustments, with cash held on client bank accounts at that date, after allowance for uncleared items, revealed a cash shortage of £18,359.47. It was further reported that an additional cash shortage had arisen after 31<sup>st</sup> May 2000 totalling £32,913.70.
5. The Respondent had agreed the existence of both of those cash shortages, the latter being as at the 16<sup>th</sup> October 2000. The total shortage was partially replaced by two transfers from office to client bank account of £2,904.01 and £90.77 on the 31<sup>st</sup> July and 10<sup>th</sup> August 2000 respectively together with an amount of £1,000.00 received from a client and lodged in client bank account in respect of an overpayment. The shortage was further reduced by a payment into client bank account on the 17<sup>th</sup> October 2000 of £10,761.00 from the Respondent's partner, Mrs S. It was the Respondent's position that the shortage was further reduced by his issuing four bills of costs totalling £6,756.25. The Respondent explained to the Investigation Accountant that he enjoyed a poor current cash flow position. He had current work in progress for which he intended to bill for the work undertaken and which costs were properly due in order to cover the remaining cash shortage of £29,761.14. He said that if anticipated completions did not materialise imminently he fully appreciated that he had to take steps to eradicate the shortfall.
6. Cause of the Cash Shortage - £51,273.17

The cash shortage arose in the following way:-

As at 31<sup>st</sup> May, 2000 - £18,359.47

(i) Debit Balances - Overpayments	£4,900.64
(ii) Over transfer	1,955.00
(iii) Unallocated Transfer from Client to Office Bank Account	7,826.87
(iv) Incorrect Transfers from Client to Office Bank Account – General	1,192.63
(v) re: SS	<u>2,484.33</u>
	<u>18,359.47</u>

Post 31<sup>st</sup> May, 2000 - £32,913.70

(vi) Incorrect Transfer from Client to Office Bank Account – General	13,575.45
(vii) re: SS	8,577.25
(viii) Incorrect payment from Client Bank Account	<u>10,761.00</u>
	<u>32,913.70</u>

Items (i) (ii) (iii) (v) (vi) (vii) & (viii) are dealt with below

(i) Debit Balances

7. During the period 9<sup>th</sup> September, 1999 to 30<sup>th</sup> May, 2000 twenty-four overpayments, varying in amount between £2.36 and £15,812.44, and totalling £24,784.66, were recorded on eighteen client ledger accounts. During the same period, funds received from the relevant clients or transferred from related client ledgers reduced the resultant debit balances to £4,900.64 as at 31<sup>st</sup> May 2000.
8. The Respondent had expressed the hope that these sums reflected errors which he could identify and correct on inspecting the files.
9. An overpayment had been made in connection with a property sale in the case of Mr F for whom the Respondent acted.
10. The relevant account in the client ledger showed that, on 10<sup>th</sup> November, 1999, a payment of £2,996.25 was made to Winkworth & Co. in respect of estate agency charges, when only £905.48 was properly available, thereby giving rise to a debit balance of £2,090.77.
11. On 24<sup>th</sup> February, 2000 an amount of £1,000.00 was received from the client and credited to the ledger reducing the debit balance to £1,090.77. This remained the position as at 31<sup>st</sup> May 2000.

(ii) Overtransfer

12. The Respondent acted for Mr S, in connection with a property purchase. The relevant account in the client ledger showed that on 13<sup>th</sup> September, 1999 a client account cheque was drawn for £9,000.00 to the Inland Revenue when there was £6,536.00 standing to the credit of the ledger, thereby creating a debit balance of £2,464.00. On the same day the ledger showed a credit of £2,464.00, recorded as being a transfer from office to client bank account, thereby eliminating the debit balance.
13. The ledger account showed that thereafter on 11<sup>th</sup> October, 1999 an amount of £3,000.00 was received from the client and credited to the ledger and on 8<sup>th</sup> May, 2000 three transfers were made from client to office bank account, being £6.00 and £21.00 in respect of disbursements and £2,464.00 to reverse the earlier transfer from office to client bank account on 13<sup>th</sup> September, 1999, culminating in a credit balance of £509.00.
14. The Respondent agreed with the Investigation Accountant that the transfer on 13<sup>th</sup> September, 1999 was a book entry only and no equivalent transfer of funds had been made from office to client bank account.

(iii) Unallocated Transfers from Client to Office Bank Account

15. During the period 23<sup>rd</sup> September, 1999 to 14<sup>th</sup> February, 2000, six transfers, varying in amount between £49.36 and £4,522.03 and totalling £7,826.87, were made from client to office bank account but none was posted to a client ledger account. The Investigation Accountant noted that efforts had been made to reverse the transfers by the firm's bookkeeper but a degree of confusion over the correcting entries left the

situation unresolved. The Respondent believed the transfers were in respect of costs due to the firm he would have further to investigate the transfers.

(iv) & (vi) Incorrect Transfers from Client to Office Bank Account

16. Mr Emanuel acted for SS, a large retail firm in numerous commercial conveyancing transactions.
17. On 14<sup>th</sup> January, 2000 a transfer totalling £10,890.08 was made from client to office bank account, which was not posted to any client ledger. The supporting transfer document stated 'SS see list attached'. No supporting list was available for inspection.
18. At 31<sup>st</sup> May, 2000, bills of costs, totalling £8,405.75 had been raised and posted to the office side of various SS client ledgers, but no transfer of funds from client to office bank account had been posted to the relevant ledgers.
19. Various SS matter ledgers recorded client funds being held, apparently for costs and disbursements incurred, totalling £31,591.99, as at 31<sup>st</sup> May 2000.
20. The Respondent explained that over the previous eighteen months he had experienced serious book-keeping problems as a result of which, funds received from his client, SS, had been posted to the wrong SS ledgers and transfers of costs from client to office bank account had remained un-posted. The Respondent agreed that the transfer of £10,890.08 was in excess of the costs properly due of £8,405.75.
21. On 22<sup>nd</sup> September, 2000, a further transfer totalling £12,866.00 was made from client to office bank account, which was not posted to any client ledger, relating to three SS matters. A review of the relevant SS client ledgers and relevant matter files, revealed that as at 22<sup>nd</sup> September, 2000, a further bill of costs totalling £4,288.75 had been raised and posted to the office side of a SS client ledger but no transfer of funds from client to office bank account had been posted.
22. The Respondent agreed that the transfer of £12,866.00 was in excess of the costs properly due of £4,288.75.
23. The Respondent subsequently prepared two bills of costs totalling £4,876.25 for completed unbilled work on SS matters which would reduce the cash shortage on this client ledger to £6,185.33.

(vi) Incorrect Transfer from Client to Office Bank Account – General £13,575.45

24. On the 8<sup>th</sup> June, 2000, an amount of £13,575.45 was transferred from client to office bank account. The books of account showed that this transfer was in respect of balances on seventeen separate client ledger accounts. The Respondent said that he believed the balances related to completed matters and that they represented costs due to the firm. He was unable to produce any bills of costs in support of the individual transfers. He said that he would have to look at the files individually to ensure that the amounts were costs due. He agreed that the transfer 'technically' represented a breach of the Solicitors' Accounts Rules and a cash shortage on client bank account.

(viii) Incorrect Payment from Client Bank Account

25. On 6<sup>th</sup> July, 2000 a transfer totalling £10,761.00 was made from client bank account to the Respondent's private bank account. The Respondent said that the amount of £10,761.00 was money due to his client, SS, being the balance of funds held on four of their client ledgers. He said that he had paid the money into his personal account in error, due to the fact that he only had a temporary bookkeeper and that his books of account were in arrears. He had not realised his mistake until mid-September. He said that upon discovery he had immediately replaced the funds into client bank account on 19<sup>th</sup> September, 2000.
26. On 22<sup>nd</sup> September, 2000 a further transfer of £10,761.00 was made from client bank account to Mrs S (the Respondent's former social partner). The Respondent had intended to transfer the funds to his client SS but, owing to personal pressures at the time, he had inadvertently filled out the particulars of Mrs S on the Telegraphic Transfer request form. The error was not identified until early October when the client bank account statements for September were received. Mrs S had repaid the monies into client bank account by way of a banker's draft on 17<sup>th</sup> October, 2000.
27. The Respondent acted for VH in connection with the sale and purchase of her properties. Under the terms of the sale contract, the sum of £13,000.00 was retained by the Respondent from the sale proceeds in his client account to await the outcome of an insurance claim made by VH. In the event that the claim was successful, the sum retained would be sent to the purchasers' solicitors.
28. The insurance claim was successful and VH notified the Respondent of this by fax dated the 3<sup>rd</sup> February 2000, requesting that he account to the purchasers' solicitors for the sum retained and to her for any interest.
29. The request was not complied with. Correspondence ensued and the monies were recovered by Freeman Box (instructed by VH) from the intervention agent appointed by the OSS following the intervention into the Respondent's practice, authorised on the 14<sup>th</sup> February 2001.

**The Submissions of the Applicant**

30. It was clear that there had been an element of financial muddle on the part of the Respondent. In the submission of the Applicant there had also on his part been a degree of knowledge and understanding of what was going on. The matters referred to in the Investigation Accountant's Report spoke for themselves.
31. The Law Society had intervened into the Respondent's practice on the grounds of his suspected dishonesty. The way in which financial transactions had been handled by the Respondent's firm inevitably raised the suspicion of dishonesty.

### **The Submissions of the Respondent**

32. The Respondent admitted the facts in support of the allegations and the allegations themselves but denied that he had been dishonest.
33. The Respondent had had a very difficult time indeed and problems in his personal life had led to his suffering a “mental breakdown” as a result of which he ceased properly to function as a solicitor.
34. The Respondent had been involved in acrimonious divorce proceedings. He had instructed a reputable firm of solicitors but the solicitor instructed left the practice. The Respondent did not believe that he was well served by the legal executive who was deputed to handle his case.
35. The Respondent had been a partner in a firm and had been there for some twenty years. He had practised as a property and commercial solicitor. The work which he undertook had fallen off in the early 1990’s as a result of the economic recession. The Respondent had in 1991/1992 set up in practice on his own and had worked hard to gain instructions. He had been successful in attracting work and had moved to bigger offices where he had become known and respected. The Respondent’s client, SS, was a large firm on whose behalf he acted on substantial matters and had done so for many years.
36. The Investigation Accountant from the OSS had arrived apparently after reports had been made to the Law Society’s “red alert system”. An estate agent had been “very pushy” about the payment of his commission.
37. The Respondent had come to recognise that he had gone steadily down hill so far as his health was concerned.
38. The Respondent had enjoyed a relationship with his former “PA” but the relationship had come to an end. The Respondent then began to live in a residential flat converted from above his office premises.
39. The Respondent said he had become rude and aggressive and over time had come to recognise that he had a serious mental health problem. He had delayed in some important aspects of his work. The Respondent had placed considerable reliance upon an experienced and trusted bookkeeper who had become ill and had left his employ. His accounts had been transferred to a computerised system and the Respondent had allowed his bookkeeper to upgrade the system without exercising any personal control. The bookkeeping “package” had proved far too complex. It had been necessary to send away the computer software to a firm for upgrading. That firm had made a mistake and had lost a lot of the recorded material. The software company then went into liquidation.
40. Also at that time the Respondent’s partner had problems with alcohol and she ceased to turn up in the office. Her daughter had suffered serious illnesses which had been painful to watch. The Respondent had been trying to juggle his disastrous home life with his work obligations at a time when he was dogged by accounting difficulties.

41. The Respondent had enjoyed the considerable support of his bankers but that support had extended to substantial permitted overdrawing. The Respondent's substantial indebtedness had been another pressure and a problem.
42. The Respondent's behaviour was such that he had become reclusive and upset his friends, his clients, his family and himself.
43. The Respondent had always understood accounting and had difficulty in coming to terms with the errors and resultant misuse of clients' money which had occurred in his firm.
44. In particular the Respondent had found himself entirely unable to explain why he had paid money belonging to SS into the account of Mrs S. That money had been transferred while the Law Society's Investigation Accountant was actually physically present in the Respondent's office. The Respondent said that his behaviour had been bizarre and attributable to his mental breakdown.
45. The Respondent's past record had been exemplary. He had believed that he could deal with his problems on his own and had not sought medical help.
46. The Tribunal was invited to consider a medical report handed up by the Respondent.
47. The Respondent had been employed for a short period of time by a firm of solicitors in Camden Town. He had been frank in disclosing his history. It became apparent to the Respondent that he had not fully recovered and he had ceased working for the firm.
48. He had not taken any steps to seek the Law Society's approval (as a Practising Certificate had been granted to him on a conditional basis) until he knew the outcome of the disciplinary proceedings.
49. The Respondent's former employers had agreed to employ him again when he felt able to recommence work.
50. Mr Onokaie, who had employed the Respondent, confirmed that he was fully aware of the Respondent's background. The Respondent had in the past assisted with the completion of conveyancing matters and he had undertaken some civil matters.
51. Mr Onokaie had suggested to the Respondent that he would be assisted by a course of counselling. The Respondent was unlikely to suffer the same difficulties in his personal life that he had in the past and Mr Onokaie's opinion was that the Respondent would not err again. Mr Onokaie had not applied to the Law Society for consent to employ the Respondent as he and the Respondent had considered that it was prudent to await the outcome of the disciplinary proceedings.

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

The Tribunal found all of the allegations to have been substantiated and indeed they were not contested. They did not make a finding of dishonesty against the

Respondent but took the view that his failures had largely been the result of his physical and mental stress.

The Tribunal recognised that the Respondent had been subjected to considerable pressure in his personal life such as failed relationships, problems with children and financial difficulties. The Tribunal accept that the Respondent had not been guilty of dishonesty not even to the extent that he had turned a blind eye to what was going on. In reality he simply had not known what he was doing. The Accounting discrepancies and the mishandling of clients' funds which inevitably followed on from there had been a reflection of the Respondent's unfortunate seriously stressful condition.

It would have helped had the Respondent availed himself of medical assistance at an early stage in what his general practitioner described as "reactive depression."

The Respondent had not proved that he was capable of coping with the stress and strains of practice as a solicitor. It was to the Respondent's credit that he had admitted the allegations and had pointed out to the Tribunal that he understood accounting and recognised his serious failures to deal with client matters in the way that he would have considered to be his usual exemplary manner.

The Tribunal considered in all of the circumstances that it would be right to order that the Respondent be suspended from practice for an indefinite period of time. It would be open to the Respondent to make application to the Tribunal for that indefinite period of suspension to be lifted when he was in a position to demonstrate that he had been able to work without a recurrence of previous personal and mental difficulties and could be relied upon to maintain the high standards required of a solicitor.

The Tribunal Ordered that the period of suspension should not come into force until one month after the hearing to give the Respondent's prospective employers the opportunity of applying to the Law Society for permission to employ the Respondent as such permission would be necessary if the Respondent as a suspended solicitor were to be employed within a solicitor's practice.

The Tribunal referred the Respondent to the assistance that would be available to him through the organisation "Law Care" and the Respondent gave an assurance to the Tribunal that he would approach that organisation for assistance.

DATED this 18th day of April 2002

on behalf of the Tribunal

L. N. Gilford  
Chairman