

IN THE MATTER OF FRANK CLIFFORD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A G Ground (in the chair)  
Mr. J C Chesterton  
Mr. D E Marlow

Date of Hearing: 10th January 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 Katrina Elisabeth Wingfield solicitor and partner in the firm of Messrs Pennington, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE on the 9<sup>th</sup> July 2001 that Frank Clifford of Great Suffolk Street, London, SE1 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- i) he was in breach of the Solicitors Accounts Rules 1991 (Rule 7);
- ii) his books of account were not in compliance with the Solicitors Accounts Rules;
- iii) he failed to rectify a shortage on client account of £41,371.17 immediately it was brought to his attention;
- (iv) by virtue of the aforementioned he had brought the solicitors' profession into disrepute and had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Katrina Elizabeth Wingfield, solicitor and partner in the firm of Messrs Pennington, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE appeared and the Respondent was represented by Brian Gallagher of Counsel.

The evidence before the Tribunal included a bundle of documents handed up by the Respondent. The Respondent admitted allegations i). ii) and iii) but denied that he had brought the solicitors' profession into disrepute and denied that he had been guilty of conduct unbecoming a solicitor.

At the conclusion of the hearing the Tribunal ordered that the Respondent Frank Clifford of Great Suffolk Street, London, SE1, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 10<sup>th</sup> January 2002 and they further ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed between the parties.

For the avoidance of doubt the costs awarded in favour of the Applicant are to include the costs of the Monitoring & Investigation Unit of The Law Society.

The facts are set out in paragraphs 1 to 8 hereunder: -

1. The Respondent who was 83 years of age had been admitted as a solicitor in 1965. He had qualified after a career as a trade union official and legal executive. At the times material to this application the Respondent carried on practice in partnership under the style of Clifford & Co, 24- 26 Great Suffolk Street, London, SE1 OUE,
2. On 16<sup>th</sup> November 1999 an Investigation & Compliance Officer ("ICO") of the Monitoring & Investigation Unit of The Law Society commenced an inspection of the books of account of Messrs Clifford & Co. The ICO's Report dated 4<sup>th</sup> September 2000 was before the Tribunal.
3. The ICO's Report revealed that Clifford & Co's books of account were not in compliance with the Solicitors Account Rules. A cash shortage of £41,371.17 was identified as existing at 30<sup>th</sup> September 1999.
4. The cash shortage was due to an incorrect transfer of the sum of £41,371.71 from client to office bank account in respect of costs where no bill had been delivered to the client, Mr W, for whom the Respondent had acted in a personal injury matter.
5. The sum of £41,371.17 had been transferred from client to office bank account on 26<sup>th</sup> November 1998. The transfer followed a letter which the respondent wrote to Mr W on 9<sup>th</sup> September 1998. In that letter the Respondent had said inter alia:-
 

"I have retained from the damages a sum to meet, first of all our professional charges for the whole conduct of your action, the costs arising out of our attendance at [Court] with the medial witness and others..... The total sum which came from the Court Funds Office today is £781,394.17."
6. On 3<sup>rd</sup> January 2001 the Respondent had sent a letter to Mr W in the following terms:-

"Mr W  
3<sup>rd</sup> January 2001

Dear Mr W,

I regret having to trouble you but The Law Society which controls the activities of all Solicitors in the UK require me to serve you with a Bill of Costs arising out of the action I conducted on your behalf commencing in early 1980 after you had been in the hands of other solicitors [*their application for Legal Aid had been refused and*] I too made an Application for Legal Aid, but it was again refused. I had then to decide whether I was prepared to conduct an expensive action on your behalf without receiving any payment for my work until the matter was concluded. .... Before [your] previous Solicitors would release the papers to me I had to pay their disbursements. A Writ was issued on the 15<sup>th</sup> August 1990 and because of the arguments on liability which eventually involved three Defendants it was not until some 9 years later the action was concluded.

During the course of the action I was able to obtain an Interim Payment of damages and later sufficient funds to enable you to give up your home in Lincoln and obtain a bungalow. It took some time to establish liability on the part of the Defendants, but the action continued for such a long period because of the serious nature of your injuries and your continuing treatment for various conditions.....

.....eventually there was a Payment into Court which I regarded as reasonable, but Counsel took a different view. Initially the matter was in the hands of ..... an experienced Counsel and later by ..... QC to whom a Brief was delivered in good time before the trial. .... the Brief was passed to ..... QC.

.....eventually terms were agreed on the basis of you accepting the Payment into Court but that you should bear the costs of all the expenses incurred after the Payment into Court on the 19<sup>th</sup> June 1998 although both Counsel were entitled to their Brief fee because the Briefs had been served before the Payment into Court. Leading Counsel was paid £10,000 and Junior Counsel £5,000 in respect of their Briefs and attendance at Court. The terms of settlement which they agreed with the other side gave me no payment for myself, the two Specialists together with yourself, your mother and the other witnesses and the work I had carried out after June 19<sup>th</sup> 1998.

The convention which applies in our work is that once you have delivered a Brief to Counsel he takes the decisions which is what happened in your case. There are still Counsels fees outstanding which I am disputing, but this does not affect you in any way. I did of course have to travel to Lincoln on the day previous to the trial, stay overnight and return to London the following day which effectively was about 1½ days work for which I was not paid.

To round off this explanation of the work done on your behalf without any Legal Aid support the sum of £41,371.17 was transferred from our clients account to our office account and this represented our charges to you on a

Solicitor and client basis for the period of 9 years during which we had the conduct of your claim. I am therefore giving you formal notice of our charges on this basis. I am enclosing a copy of our computer print out which sets out the whole of our disbursements from the issuing of the Writ on the 15<sup>th</sup> August 1990 to the end of the case.

Would you be good enough to acknowledge receipt of this letter ..... and confirm you are satisfied and accept the figures I am putting to you. ....

Yours sincerely  
F. Clifford"

7. The Respondent informed the ICO that the sum of £41,371.17 was properly due in respect of costs and disbursements but that it was difficult to send a final bill as his firm was still paying disbursements. The Respondent indicated that he would either immediately issue an interim bill of costs or transfer the said sum from office to client bank account. The Respondent indicated that he would send evidence of the rectification to the OSS. However no such evidence was received by the date of the ICO's Report.
8. At the date of the hearing the Respondent had not issued any bill.

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

9. The Respondent admitted allegations i), ii) and iii).
10. The Respondent stated in a letter addressed to the OSS on 4<sup>th</sup> January 2001:-
 

"In accordance with your directions I have now written to Mr W with a bill for our charges which you say were wrongly transferred to our office account at the conclusion of the action we conducted on behalf of Mr W."
11. The Respondent's letter dated 3<sup>rd</sup> January 2001 was not a bill. It could not be considered to constitute a bill. It was a letter setting out certain facts relating to the case conducted on behalf of Mr W and enclosing a copy of the firm's ledger card.
12. In the submission of the Applicant the Respondent's letter of 3<sup>rd</sup> January 2001 could not really be construed as a written intimation of costs.
13. No bill as such had been produced.
14. It had been the Respondent's approach that he was entitled to take the money for costs and disbursements. The way he had dealt with that had been in breach of the Solicitors Accounts Rules.
15. In the submission of the Applicant the Solicitors Accounts Rules were in place to safeguard the public and the Respondent by his behaviour had "driven a coach and horses" through those rules. That did amount to conduct unbecoming a solicitor and would certainly bring the solicitors' profession into disrepute.

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

16. On behalf of the Respondent it was accepted that he had not delivered a formal bill. No explanation could be made as to the VAT position.
17. Throughout the Respondent's conduct of the case on behalf of Mr W, Mr W had been informed that he would have a personal liability for costs. The Respondent had played fair with the client who had at all times been aware of the costs position. The Respondent had achieved a good result for the client. The client had been in receipt of a number of benefits which had rendered him ineligible for Legal Aid. The Respondent had taken on the case without the benefit of Legal Aid funding.
18. The client had written to express his satisfaction after being notified of the costs transferred from client to office account.
19. The Respondent accepted that no formal bill of costs had been drawn and that no written intimation of costs had been given to the client until the letter of 3<sup>rd</sup> January 2001.
20. The client had been treated entirely fairly by the Respondent and although he had put himself in breach of the letter of the Solicitors Accounts Rules he had not been in breach of the spirit of those Rules: he could not be said to have been guilty of conduct unbecoming a solicitor nor could his action bring the solicitors' profession into disrepute. It was accepted by the Respondent that he might have dealt with the matter in a better way.
21. The Respondent had retired from practice. His practising certificate had expired and he had no intention of seeking its renewal. The Respondent had been in partnership with his daughter and she continued to run the practice of Clifford & Co.

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

The Tribunal found the admitted allegations i), ii) and iii) to have been substantiated.

The Tribunal considered that the Respondent's failure to comply punctiliously with the provisions of the Solicitors Accounts Rules did amount to conduct unbecoming a solicitor. Those rules were in place to ensure fair treatment of clients' monies by solicitors and punctilious compliance with those rules was essential to preserve the confidence of members of the public in the solicitors' profession and any failure to comply inevitably served to bring the solicitors' profession into disrepute.

The Tribunal found allegation iv) to have been substantiated.

On 25<sup>th</sup> November 1987 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that he:-

- (a) utilised clients' funds for his own benefit;
- (b) transferred sums for costs in amounts that he knew or ought to have known he could not justify;
- (c) failed to account to clients for sums recovered on their behalf;

- (d) gave an undertaking to the court which was misleading and which he ought to have known was worthless;
- (e) practised as a solicitor without there being in force a practising certificate.

On that occasion the Tribunal was satisfied that the Respondent was a solicitor of fundamentally good character and noted the high regard which character witnesses had for the Respondent's integrity, his ability and his desire to do the best for his clients. It was said that he strenuously but fairly pursued his clients' interests. He was highly experienced in personal injury litigation. In finding allegations (a) and (b) to have been substantiated the Tribunal accepted that there was no dishonest intent on the part of the Respondent. They also in finding allegation (c) to be substantiated accepted that the Respondent's non-payment of witness expenses did not constitute a deliberate omission. The Tribunal went on to say that it was dismayed to learn of the Respondent's arrogant attitude towards his professional body upon the question of the issue of a Practising Certificate.

The Tribunal ordered the Respondent to pay a penalty of £3,000 and the costs of and incidental to the application and enquiry.

That was the maximum fine that the Tribunal was empowered to impose.

On the 24<sup>th</sup> February 1995 the Tribunal found the following allegations to have been substantiated against the Respondent namely that the Respondent had:-

- (i) been guilty of conduct unbefitting a solicitor in that he had been responsible for unreasonable delay in the conduct of professional business;
- (ii) been guilty of conduct unbefitting a solicitor in that he failed promptly or at all to reply to correspondence from other solicitors and from the Legal Aid Board;
- (iii) been guilty of conduct unbefitting a solicitor in that he unreasonably delayed to pay fees to a professional agent;
- (iv) been guilty of conduct unbefitting a solicitor in that he failed promptly if at all to reply to correspondence from the Solicitors Complaints Bureau.

In 1995 the Tribunal said:-

"The Tribunal has given anxious consideration to the matters before them particularly having regard to the age of the Respondent.

They have considered the cumulative effect of the allegations and have had to give weight to the previous Findings and Order relating to the earlier appearance before the Tribunal of the Respondent.

It is the view of the Tribunal that the Respondent in the matters before them acted in an unacceptably autocratic and arrogant manner. No contrition was displayed by the Respondent. It was accepted that his delays and non replies did not mark total failures to deal with matters in his hands and indeed, his dealings appeared to be characterised by bursts of activity followed by periods of inactivity. Such a method of dealing with matters (or failing to deal with matters) caused inconvenience, anxiety and expense to other solicitors and in the case of Mr C, in no small measure to the Area Legal Aid Office and indeed ultimately to the Legal Aid Board itself. The solicitors first instructed in the

action had been severely prejudiced by the Respondent's failures in that they had not been able to be paid for the work undertaken by them for a long period of time. It had to be noted that the matter was only resolved by the extremely sensible if unorthodox steps taken by the Legal Aid Board itself. The Respondent's apparent disdain for his own professional body was to be deplored. It was to be recognised that membership of the solicitors' profession brought many benefits but it also brought burdens. One of those was the subjection to scrutiny by the Bureau, representing the solicitors' professional body, of any matter in which complaint had been made. A solicitor has a duty to deal fully and punctually with any matter raised with him by the Bureau. A failure so to do prevented the Bureau from carrying out its functions, places a greater cost upon the profession and serves to alienate any complainant who places a greater cost upon the profession and serves to alienate any complainant who has to be told that a solicitor simply will not deal with the matters of complaint. That can only serve to undermine the good reputation of the solicitors' profession.

The Tribunal take the view that the Respondent has fallen far below the high standard to be expected of members of the profession. The Respondent's attitude to his professional obligations is deprecated by the Tribunal and in view of his previous history of appearance before the Tribunal, and his apparent failure to learn from that experience, the Tribunal considered it right to impose a period of suspension (*of three years to commence on 24<sup>th</sup> February 1995*) upon the Respondent and ordered him to pay the costs of and incidental to the application and enquiry."

In January 2002 the Tribunal was dismayed that the Respondent had, at the age of 83 years, appeared before them on a third occasion. Earlier Tribunals had described the Respondent's arrogant attitude towards his own professional body and his previous behaviour had led him to be suspended from practice for a period of three years.

The Tribunal was deeply concerned that the Respondent still had not submitted a bill of costs to Mr W although he had taken money for costs. Clearly there would be VAT and other taxation implications in the Respondent's behaviour. The Tribunal regarded the Respondent's failure as extremely serious and was most concerned that the Respondent had not modified his behaviour after the previous three year suspension, and the earlier maximum fine. In all of the circumstances the Tribunal considered it right that the Respondent should be suspended from practice for an indefinite period of time. It was also right that the Respondent should pay the costs of and incidental to the application and enquiry to include the costs of the Investigation and Compliance Officer of The Law Society.

DATED this 5<sup>th</sup> day of March 2002

on behalf of the Tribunal

A G Ground  
Chairman