

IN THE MATTER OF JOHN RICHARD PARKER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr S N Jones (in the chair)  
Mr I R Woolfe  
Lady Maxwell-Hyslop

Date of Hearing: 11th February 2003

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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 George Marriott, solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 13<sup>th</sup> July 2001 that John Richard Parker of Worsborough, Barnsley, 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 unbecoming a solicitor in that:-

- (i) [Withdrawn with the consent of the Tribunal];
- (ii) He dishonestly misappropriated funds held under a Power of Attorney for his own benefit [allegation set out as amended with the consent of the Tribunal];
- (iii) He utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to those funds;

- (iv) He drew money out of client account contrary to Rule 19 other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (v) [Withdrawn with the consent of the Tribunal.]

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 11<sup>th</sup> February 2003 when George Marriott, solicitor and partner in the firm of Gorvins of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent in relation to allegations (ii), (iii) and (iv) capped in the amount admitted by the Respondent in criminal proceedings at Doncaster Crown Court, namely £43,900, as set out in the letter to the Tribunal dated 10<sup>th</sup> February 2003 from the Respondent's solicitors, Messrs Irwin Mitchell.

At the conclusion of the hearing the Tribunal ordered that the Respondent John Richard Parker of Worsborough, Barnsley, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £17,157.65.

The facts are set out in paragraphs 1 to 15 hereunder: -

1. The Respondent, born in 1949, was admitted as a solicitor in 1974 and his name remained on the Roll of Solicitors.
2. At the material time the Respondent carried on practice in partnership under the style of Parkers of 10a Market Street, Penistone, Sheffield, S36 6BZ.
3. An Investigation and Compliance Officer appointed by the OSS commenced an inspection of the Respondent's books of account on 25<sup>th</sup> October 1999. A copy of the resulting report dated 9<sup>th</sup> May 2001 was before the Tribunal. The report noted the matters set out below.
4. As at 28<sup>th</sup> February 2001 the Respondent's liabilities to clients totalled £189,197.81 and the cash available was £187,270.53 meaning that there was a cash shortage of £1,927.28.
5. The shortage was partly corrected by a transfer on 24<sup>th</sup> April 2001 from office account to client account totalling £1,216.71. The remaining shortfall was said to have been replaced in March 2001 by a similar transfer but no evidence of this was provided to the Investigation and Compliance Officer.
6. The cash shortage arose for four reasons namely:-
  - (1) unallocated transfers from client to office bank account;
  - (2) cash received but not lodged in client bank account;
  - (3) an overpayment from client bank account
  - (4) a surplus on the book difference.

7. On 26<sup>th</sup> January 2001 a transfer of £3,072.50 was made from client to office bank account in respect of costs but only the sum of £2,072.50 was allocated to an individual client ledger by the firm's cashier and therefore £1,000 remained unallocated as at 28<sup>th</sup> February 2001.
8. On 2<sup>nd</sup> February 2001 a further transfer was made from client to office bank account in respect of costs but the cashier was only able to allocate the sum of £2,842.29 to an individual client ledger account leaving the sum of £1,216.71 unallocated as at 28<sup>th</sup> February 2001.
9. The matter had been drawn to the attention of the Respondent by an external cashier and the Investigation and Compliance Officer was advised that a system had been introduced to prevent such matters happening in the future.
10. The Respondent acted for G who was the sole executrix of the late BF. The matter file contained a receipt dated 16<sup>th</sup> June 1999 for an amount of £150 paid to the Respondent in respect of the sale of jewellery from the estate. That sum was not recorded on the client ledger account for BF.
11. At the meeting on 24<sup>th</sup> April 2001 the Respondent told the Investigation and Compliance Officer that the sum should have been recorded on the ledger and should have been paid into client account as the money has been paid to him in cash. The Respondent acknowledged that he had known since at least October 2000 that the funds were not in client bank account, agreed that he had initially received the money but said that it had not gone into his pocket.
12. The Respondent acted for Mr E under an Enduring Power of Attorney granted to him on 6<sup>th</sup> August 1998. Mr E had two accounts, both of which were annotated as power of attorney accounts.
13. The Respondent having initially denied that he had the passbooks, they were eventually given to the Investigation and Compliance Officer on 24<sup>th</sup> April 2001. With regard to one account, withdrawals totalling £61,950 were made payable to the Respondent between 23<sup>rd</sup> June 1999 and 5<sup>th</sup> April 2001. Of that sum £2,950 was drawn by the Respondent in cash. With regard to the second account, withdrawals totalling £37,020 had been made between 10<sup>th</sup> December 1998 and 5<sup>th</sup> April 2001. A total of £7,120 of that sum was drawn as cash.
14. In a further interview with the Investigation and Compliance Officer concerning the various withdrawals, the explanations given by the Respondent in terms were as follows:-
  - (a) The withdrawals had been made at Mr E's request.
  - (b) The withdrawals had been made by Mr E personally to cover his daily requirements.
  - (c) Mr E contacted him roughly every eight weeks to be given £200 in cash.

- (d) Seven cheque withdrawals from the Halifax account totalling £14,900 represented payments for gifts and some might have been paid into his personal bank account.
  - (e) The cheque payable to P & Co totalling £15,000 was in respect of a gift Mr E made to a close friend to assist in purchasing a property.
  - (f) Mr E was in the habit of making gifts to his family and friends.
  - (g) The Respondent drew monies and paid them into his own bank account so that when Mr E decided who the recipients of the funds were to be the Respondent could pay them straight out of his bank account.
  - (h) It was a roundabout way but it worked in practice.
  - (i) The Respondent agreed that he was in breach of the Solicitors Accounts Rules in failing to keep records.
  - (j) The Respondent denied that he had received the monies for himself or that he had used the monies dishonestly.
  - (k) The Respondent accepted that his bank account had benefited from the funds passing through it.
  - (l) The Respondent would normally pay out funds as instructed by Mr E the same or next day following receipt of monies from Mr E's accounts.
  - (m) The Respondent would provide evidence of doing this.
15. The Investigation and Compliance Officer spoke to Mr E (since deceased) who stated in terms as follows:-
- (a) He had no recollection of P & Co.
  - (b) He had sufficient monies to live on without the need to resort to the Respondent.
  - (c) His teacher's pension was paid into his bank account and from that his home fees were paid.
  - (d) He contacted the Respondent about once a year for cash.
  - (e) He would ask the residential home to cash a cheque for him.
  - (f) He did not have the passbooks referred to above.
  - (g) He never withdrew cash or cheques from the accounts.
  - (h) He had asked the Respondent to pay for gifts to his daughters and to his wife's brother at Christmas.

- (i) He could not recall making any other gifts.

**The submissions of the Applicant**

16. The Tribunal was referred to the letter dated 10<sup>th</sup> February 2003 from Messrs Irwin Mitchell, the sentencing remarks of Her Honour Judge Carr QC and the list of charges against the Respondent.
17. The letter stated that the Respondent had been sentenced to fifteen months' imprisonment by Her Honour Judge Carr on 1<sup>st</sup> November 2002.
18. The letter also contained an admission on behalf of the Respondent to allegations (ii), (iii) and (iv) capped in the amount admitted at Doncaster Crown Court namely £43,900.
19. The letter together with the sentencing remarks was, in the submission of the Applicant, sufficient for the Tribunal to find the admitted allegations substantiated.
20. The Applicant sought to withdraw allegations (i) and (v) and to amend allegation (ii) for clarity.
21. In the submission of the Applicant, the most serious allegation was allegation (ii).
22. The Respondent's admission to the allegations was capped in the sum of £43,900 which was the money taken dishonestly and improperly by the Respondent under the Enduring Power of Attorney in respect of Mr E.
23. The Respondent had practised in partnership and proceedings had initially been brought against the Respondent's partner but these had been withdrawn by the Tribunal on 9<sup>th</sup> April 2002.
24. The Respondent was now serving a sentence of imprisonment.
25. The Tribunal was referred to the Applicant's schedule of costs.
26. Some of the attendances involved the Respondent's partner but the Applicant submitted that the Tribunal had power to order the costs against one respondent in respect of a whole matter.
27. The Applicant accepted that the Respondent was bankrupt and that enforcement of a costs order would be difficult.

**Submissions on behalf of the Respondent**

28. The submissions on behalf of the Respondent were contained in the letter from Messrs Irwin Mitchell dated 10<sup>th</sup> February 2003 which is summarised below.
29. The letter contained admissions to allegations (ii), (iii) and (iv) capped in the amount admitted at Doncaster Crown Court namely £43,900.

30. The Respondent was currently a serving prisoner and would not be attending the hearing but no discourtesy was intended to the Tribunal.
31. The Respondent had pleaded guilty on 25<sup>th</sup> September 2002 to nine charges of theft and one of deception (unrelated to the matters before the Tribunal). The nine charges related to Mr E.
32. The Tribunal was asked to note the Respondent's personal circumstances at the relevant time, in particular the break up of the Respondent's marriage of 24 years and difficulties which then arose in relation to arrangements for his children leading to the need for his wife to purchase a local property.
33. The Respondent accepted that he had used £15,000 from Mr E's account to assist his wife in obtaining a property. The Respondent had believed he would very shortly receive funds from re-mortgaging his home which he could use to replace Mr E's funds.
34. The Respondent had known Mr E for many years and knew that he did not need ready access to the monies. He believed a "short-term loan" would have minimal impact on Mr E.
35. The Respondent's re-mortgage application was then refused and the Respondent realised he had made a monumental mistake and would not be able to repay the money.
36. The Respondent's practice was not generating sufficient to cover such a large sum.
37. The Respondent believed he had underestimated the difficulties in running a practice on his own account. This was added to by the pressures caused by his marriage breakdown and the need to contribute to his children.
38. This latter point led the Respondent to take the easy way out and use funds from Mr E's account rather than admit he could not help his family.
39. The practice did not flourish as well as the Respondent had hoped over the ensuing months. He felt pressure in trying to keep up with his responsibilities to his family and his staff. He was unwilling or unable to admit his difficulties and this led to further monies being taken from Mr E's account.
40. In one sense the Respondent thought of this as borrowing although he had no idea how he would pay the money back and another part of him realised the difficulty he was in and that he could never repay the money unless there was a dramatic change in his circumstances.
41. As time went on he realised he was relying on Mr E's funds to keep the business going and could see no alternative solution.
42. A total of £43,900 was taken from two separate accounts in Mr E's name, over a period ranging from December 1998 to April 2001. All the transactions were

undertaken in a very crude manner which would inevitably lead to detection. The Respondent would simply go to the respective financial institution, obtain a cheque payable to himself, which would then be deposited into his own account. The only exception was the December 1998 offence when the cheque was made payable to his former wife's solicitors.

43. Whilst not seeking to excuse his responsibilities, the Respondent did not have a lavish lifestyle, driving only an L registered Nissan estate and holidaying within the United Kingdom with his children. This appears to have been supported by the financial analysis carried out by the police which showed that the vast majority of the Respondent's income was used to meet repayments to financial institutions.
44. The Respondent was a 53 year old man of previous good character. He grew up in the Barnsley area, qualifying as a solicitor in 1974. He had always lived and worked in and around Barnsley.
45. Following qualification the Respondent moved to the Barnsley firm of N&B in 1983. He mainly dealt with conveyancing and probate matters, along with some matrimonial work. He was made an equity partner in 1986.
46. In 1995 he left that firm to start up his own practice. He had underestimated the difficulties in running a practice, and how different it would be from the type of work he was used to. The business turnover was steady although not spectacular. Despite the fact that a great deal of time was taken up in non-fee earning matters, he was managing. However, the breakdown of his marriage de-stabilised this situation. The Respondent could handle one crisis but not two.
47. The Respondent was determined to contribute financially to his ex-wife and children. He got into a hole financially which led to him relying on E's money.
48. The Tribunal was asked to note that there were no problems with any other clients of his firm or their monies.
49. The Law Society intervened in the practice in May 2001. Since that time and prior to the Respondent being imprisoned he was in receipt of income support at a rate of £133 per fortnight. He was made bankrupt on 11<sup>th</sup> September 2001.
50. The Respondent suffered from depression and as a result had been deemed unfit to work. Part of his income support was made up of incapacity benefit.
51. On 1<sup>st</sup> November 2002 the Respondent had been sentenced to 15 months' imprisonment by Her Honour Judge Carr QC. The Tribunal was asked to bear in mind Her Honour Judge Carr's sentencing remarks where she indicated that the Respondent pleaded guilty to the offences at the first available opportunity. Whilst Her Honour Judge Carr QC viewed the E matters as particularly serious, she did indicate that she was mindful of the effect of the offending on the Respondent himself, having considered the medical report, and the significant impact that a custodial sentence would have on his children. She acknowledged that at the time of the offences and up until sentence he was of impeccable character and that he was unlikely to offend in the future again.

52. The Respondent accepted that his actions had stripped him of his good name, disgraced his family and lost him the respect of the members of his community. He was ashamed and deeply sorry for his actions.
53. The Tribunal was referred to the character reference provided at the time of the criminal proceedings.
54. The Respondent was deeply sorry for his actions and accepted from the outset the need for him to be punished in the way that he had been. He was aware that the Tribunal, in the light of his guilty pleas and acceptance of allegations (ii), (iii) and (iv), would inevitably strike him off the Roll of Solicitors. Whilst he accepted the inevitability of this course of action, it was still a blow for a solicitor and man of previous good character.
55. In relation to the Applicant's costs, it was respectfully suggested that the Respondent, a serving prisoner and bankrupt, had been punished enough. Moreover, in light of his bankruptcy, a costs order would not and could not be met.

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

56. The Tribunal gave leave for the withdrawal of allegations (i) and (iv) and for the amendment of allegation (ii).
57. Having considered the documentary evidence, the submissions of the Applicant and the submissions contained in the letter from Irwin Mitchell the Tribunal found allegations (ii), (iii) and (iv) to have been substantiated to the extent of £43,900 as set out in the admissions contained in the letter of 10<sup>th</sup> February 2003 from Irwin Mitchell.
58. The Tribunal noted the Respondent's personal circumstances set out in the letter of 10<sup>th</sup> February 2003 from Irwin Mitchell and the medical report of 31<sup>st</sup> October 2002. The Tribunal also noted the character reference put forward on behalf of the Respondent. Nevertheless the Respondent had allegations of dishonesty found against him and had been convicted and sentenced to imprisonment for offences of dishonesty relating to the same facts. The dishonesty had taken place within a systematic course of conduct. In those circumstances, it was not appropriate that the Respondent be allowed to practise as a solicitor. It was right that the Respondent's name be struck off the Roll of Solicitors and indeed the likelihood of that being the Tribunal's penalty had been recognised in the letter from Irwin Mitchell.
59. In relation to costs, the Tribunal noted the submission of the Respondent's solicitors. However, the Respondent's ability to pay was quite a different matter from any liability he may have to meet the costs of the proceedings. The Respondent's former partner had proceedings brought against him because of the conduct of the Respondent. Those proceedings had subsequently been withdrawn. In those circumstances, the Tribunal considered it was appropriate that the Respondent should meet all of the Applicant's costs in relation to the proceedings. Enforcement and the Respondent's ability to meet any costs order was a matter for the Applicant not the Tribunal.



60. The Tribunal ordered that the Respondent John Richard Parker of Worsborough, Barnsley, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £17,157.65.

DATED this 24<sup>th</sup> day of March 2003  
on behalf of the Tribunal

S N Jones  
Chairman