

IN THE MATTER OF PHILIP JOLYON HUXTABLE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. R. B. Bamford (in the chair)
Mr. A. G. Gibson
Mr. M. G. Taylor CBE

Date of Hearing: 12th September 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 Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on the 11th February 2002 that Philip Jolyon Huxtable a solicitor of Hiscott, Barnstable, Devon, 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 that he had:-

- (a) withdrawn money from client account in breach of Rule 19(2) and Rule 22 of the Solicitors' Accounts Rules 1998;
- (b) transferred sums of money as costs in circumstances where he knew or ought to have known the amount of costs were excessive, unjustified and/or improper.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Peter Harland Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed to the Tribunal by the Respondent dated the 9th September 2002 and the oral evidence of Mr Jonathan Fulthorpe of Counsel as to the Respondent's good character.

At the conclusion of the hearing the Tribunal ordered that the Respondent Philip Jolyon Huxtable of Hiscott, Barnstaple, Devon, 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 £15,501.39.

The facts are set out in paragraphs 1 to 30 hereunder:-

1. The Respondent, born in 1947, was admitted as a solicitor in 1970. At the material times he practised on his own account under the style of Pitts Tuckers of Bridge Buildings, The Square, Barnstaple, Devon. The Law Society intervened in the Respondent's practice following a resolution so to do on the 15th October 2001.
2. Following notice duly given the Monitoring and Investigation Unit ("MIU") of the OSS carried out an inspection of the Respondent's books of account beginning on the 13th September 2001.
3. During the course of the inspection of the Respondent's books concern arose as to the conduct of eight probate files and bills of costs rendered by the Respondent in connection therewith.
4. These concerns were set out in some detail in the report prepared by Mr Calvert the head of forensic investigations at the OSS dated the 13th December 2001.
5. The MIU Officer noted that the amount of costs taken in connection with eight probate matters appeared to be excessive. In respect of four client matters she noted that the level and frequency of the Respondent's billing did not appear to be born out by the contents of the relevant client files.
6. During the course of her inspection, the MIU Officer prepared questionnaires relating to each of the four matters referred to above to offer the Respondent the opportunity of stating precisely the nature of the work undertaken by reference to dates and times and to justify the fees charged on each occasion. The questionnaires together with the Respondent's responses were before the Tribunal.
7. The files relating to the four probate matters, N deceased, P deceased, B deceased and J deceased, were produced and subsequently delivered to a costs draftsman, Mr Shelley, who was asked to assess and report upon the costs taken by the Respondent and to give an opinion as to the level of costs that could be reasonably be taken.
8. The costs draftsman's report dated the 4th December 2001 was before the Tribunal.

N Deceased

9. In the matter of N deceased the Respondent's charges (net of VAT) were £30,500. The costs draftsman considered that the maximum proper charge should have been £5,400. The overcharge was therefore £25,100 representing an "uplift" of 564%. Eleven bills had been submitted. There was no costing notes on the file to support any of the bills. The narratives to the bills and the Respondent's replies to the MIU

Officer's questionnaire suggested that the Respondent had been involved in many activities of which the file contained no trace. These included visiting Mrs N on many occasions, clearing out the house, discussions with the family, discussions with the accountant and co-executor, arranging for the donor's removals to a nursing home including dealing personally with "the donor's unsavoury behaviour which led to his expulsion" from the first care home, dealing with a purchase of various things and substantial amounts of time spent on dealing with taxation, three separate invoices included a charge for "dealing with funeral".

10. The total sum charged was the equivalent of a charge for about 254 hours of work, the issues arising under the power of attorney and the estate would not have necessitated that length of time being spent: there were only minor complications in the estate. The value of the estate was well within the inheritance tax of exemption limit. In response to the MIU's questions the Respondent had said that the matters were not complex but they had been extremely time consuming involving many papers and there had been various and many visits from the family. The Respondent had dealt with the removal of N to a home and sale of the house. There had been discussions about the clearance of the house. There were taxation matters outstanding both for Mrs N and Mr N. Discussions with relatives who went to see the Respondent had not been recorded; the narrative "arranging the funeral" had been something of a misnomer for the preliminary work carried out after the death of Mr N. The Respondent had undertaken a vector of telephone calls; the Respondent explained the nature of the work undertaken in connection with the estate. The Respondent had prepared hand written draft estate accounts hoping to make a final distribution but had not been able to do so owing to unresolved taxation difficulties. He accepted that the matter had been "pretty straight forward" but a large amount of time had been spent on it. The bills had been delivered to the co-executor who had accepted them; the co-executor had been aware of the large amount of time which had to be spent on the matter. The Will did not contain a charging clause but the client's were family friends and that had been discussed at the outset. The Respondent understood that such clause in any event was no longer essential to enable a solicitor executor to charge for his services.

P Deceased

11. The late Mrs P's Will had been drawn by another firm of solicitors. She had appointed a friend as her executor. Most of the estate's value, which was just above the inheritance tax exemption limit, was in her residence. That was a country property which included out buildings and land as well as the house. The foot and mouth epidemic had affected that part of the country and became a factor in the arrangements for the auction of the property. The original sale date was however adhered to and the property was sold for a sum significantly higher than its probate valuation.
12. The total sum charged by the Respondent was £26,700 plus VAT. Two bills had been drawn in June of 2001, £1,200 and £9,000 and one on 5th July 2001 of £3,000.
13. There had been a further bill in July 2001 of £3,000 and a bill for the same amount in August and September, three bills totalling £4,500 plus VAT had been issued prior to June of 2001.

14. It was the costs draftsman's view that the maximum time element charge should have been £5,750 and the maximum value element would have been £1,505.
15. There were no costing notes on the files to support any of the bills. The total sum charged was the equivalent of a charge for about 222 hours of work. The costs draftsman questioned the huge amount of time which the Respondent said had necessarily been expended in that estate.
16. In response to questions asked by the MIU Officer, the Respondent said there had been a huge amount of papers in the case which had taken many days to sort out. The matter had not been particularly complex in the way of law but the deceased's affairs were in something of a muddle; there had also been an error in the taking of costs. He said there was a foreign asset which caused considerable problems. This appeared to have been money in a German Bank. The Respondent said the question of foot and mouth became very difficult and there had been many discussions with the agents about this, the house had been inseparable from the land and there had been a question relating to the tenancy of an adjoining farmer where foot and mouth disease had been found; and the policy to be adopted in connection with the sale of the property in the light of the Foot and Mouth disease problems; interim accounts and preliminary work had been done, dictated but owing to pressures and other directions had not been typed. He said "the amount of phone calls and time spent in dealing with matters such as insurance, checking some of the obscure legatees, out took several hours to track down, for instance, on the internet, one still remains enigmatic, has generated a huge amount of time spent on the file".

B Deceased

17. The deceased was an elderly widow living in a residential home. Her Will appointed two executors and disposed of her estate by two pecuniary legacies with the residue to be divided equally between two people and four charities.
18. The total charges made by the Respondent referred to as charges for the probate and "dealing with affairs over the last two years" was £12,000 plus VAT. The Respondent had apparently not been instructed until after the late Mrs B's death. In the costs draftsman's view the maximum reasonable costs on a time basis would have been £1,980 and a maximum value element would have been £800.
19. The Respondent had raised a bill on the 25th May 2001 for £3,200, the 7th June £2,000, 22nd June £3,000 and the 3rd July £1,800. There was nothing in the file to suggest any significant level of activity after the first bill.
20. There were no costing notes on the file which supported any of the bills.
21. The costs draftsman considered it inconsistent that the Respondent referred to the delivery of a large amount of paper work in connection with this case when the deceased had been resident in the home for at least four years prior to her death.
22. The Respondent in answer to questions raised by the MIU Officer concerned that one of the named beneficiaries had not been found. He said that if she did not materialise soon the estate would have to be finalised with her share being put on deposit. The Respondent accepted that something appeared to have gone wrong on this file. Two invoices did not relate to that file and would be re-credited. He could not be positive

after the lapse of time but he believed that the correct invoices were intended to be raised against a client with a similar name. He accepted that the matter was not complex but like many probate matters involved a large amount of paper work delivered when the deceased died which had to be checked and time was taken up with that.

J Deceased

23. Mrs J was a widow who died in 2001. The net value of her estate was £632,845 consisting of her residence, a terraced house let as three separate flats and a substantial number of investments in shares building societies banks and national savings. The late Mrs J left a will appointing two executors (one of whom was a solicitor) disposing of her property by making a number of bequests to family friends and charities. The residue was donated to a local hospice. The late Mrs J had left her house and the three flats to individuals.
24. The costs draftsman accepted that there were some real complexities in this matter. The deceased had sold one of the properties gifted in the Will before she died. The three flats had separate freehold titles. Some consideration was given to a possible contest of the Will.
25. The total charges made by the Respondent for the probate and associated conveyancing work was £58,448 plus VAT. The costs draftsman believed the maximum reasonable cost for undertaking such work would have been £11,825 with a maximum value element of about £5,800. The following unusual pattern of billing had taken place:-

02 April	11409	£1,000.00	
26 April	11498	£9,000.00	delivered 26 May
14 May	11542	£8,000.00	delivered 14 May
18 June	11640	£2,000.00	
25 June	11669	£4,000.00	
27 June	11678	£10,000.00	delivered 27 June
27 June	11682	£9,000.00	replaced with three bills 11989 – 91 totalling £9,000 on 24 September
27 June	11683	£6,000.00	delivered 28 June
24 July		£600.00	conveyancing on sale of Surf Bay Bungalow (received by executor)
20 August	11862	£2,000.00	delivered 20 August

29 August	11897	£3,148.94	
03 September	11921	£2,000.00	delivered 3 September
06 September	11928	£2,000.00	delivered 6 September
11 September	11963	-£2,000.00	credit 11640
01 October	12014	£1,700.00	
	Total	£58,448.94	

26. The costs draftsman also noted that the probate files contained the following invoice (also apparently deducted from the deceased's estate) for which no separate file existed:-

06 August	11812	£5,000.00	Addressed to North Devon Hospice Care Trust: Costs in connection with the administration of matters for some eight years, including..conveyancing...accounts...legacies preparation of articles... and generally acting
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27. The costs draftsman noted there were no costing notes to support any of the bills on the file.
28. The costs draftsman pointed out inconsistencies between the files, the bills and the Respondent's explanations the sum charged was the equivalent of a charge for about 487 hours of work. There was no evidence that so much time had been spent on the work.
29. Copies of letters on the file recorded the delivery of a seventh bill to the executor totalling £39,000 plus VAT. The executor apparently recalled receiving only one invoice in the total sum of £713.00.
30. In his explanations given to the MIU Officer the Respondent said that the matter had been one of some complexity. He explained that there had been three freehold flats and the possibility of a challenge to the Will; issues of fraud had been involved. The Respondent had spent a great deal of unrecorded time on research. The Respondent had undertaken a great deal of work for the North Devon Hospice which was chargeable and was to be charged when funds came to hand. There had been a great deal of paperwork and time spent on the deceased's tax affairs. The Respondent said that it had been an extraordinarily large job which had been pushed through as quickly as possible. A large amount of work had been undertaken from the day the file had been opened. Interim estate accounts were being prepared by accountants.

The Submissions of the Applicant

31. In the submissions of the Applicant the allegations were substantiated by the evidence. The Applicant placed reliance on the expert opinion of Mr Shelley, the costs draftsman. The overcharge in each of the four cases examined had been

extraordinarily high and far beyond the level of what might conceivably arise by mistake or oversight. The Respondent had charged between four and a half times and six times the amount he might reasonably have charged. The total overcharge in respect of all four of the probate matters investigated exceeded £90,000 (before VAT).

The Submissions of the Respondent (matters outlined in the Respondent's before mentioned letter dated 9th September 2002) are summarised below:-

32. The Respondent had been in practice since 1971 and on his own since approximately 1983. The Respondent was not able to attend the hearing owing to ill health and that of his wife.
- In recent years the Respondent acquired practices from 3 sole local practitioners. None of those practices had computerised accounting systems and the integration of the practices and their systems caused considerable management problems.
- At the time of the Law Society's intervention the Respondent employed approximately 25 people including 9 fee earners and his practice covered all areas of law.
- The Respondent undertook predominantly probate work but also acted for clients with whom he had a strong personal relationship and the more unusual cases, together with conveyancing for a local developer.
- A Probate Clerk in one of the acquired practices fell ill and that increased the Respondent's work load and necessitated to travelling to Ilfracombe 2 days a week.
- An experienced Probate Clerk from another acquired practice retired on the merger, adding more pressure to the Respondent's work load.
- The Respondent worked very long hours. He did not have the opportunity of spending the time on managing the practice which he had come to accept he should have done. It was difficult to be in the right frame of mind to make decisions because he was too close to everything, and his health was poor.
- The Respondent had become the victim of his own success.
- The Respondent denied that he had overcharged and he accepted that his record keeping was poor. When he prepared bills he did so mainly by judgement of the size of the file and the amount of work undertaken. Some relevant computer records had been erased in error by a member of staff.
- Accountants were always instructed to prepare final accounts and check through the files on probate cases of any size.
- The Respondent had received only one complaint relating to a probate bill some 3 years previously, when he made a reduction of about £1000.00.

Before the intervention the Respondent had agreed a sale in principle to another firm of Solicitors in Barnstaple. The letter was lost by them at the time the decision to intervene was made. It was subsequently found on the day after the intervention.

As a result of the intervention the proposed sale did not proceed because of their concern about adverse publicity.

The Respondent had not been able voluntarily to dispose of his practice before the intervention. As a consequence he lost the complete value of the practice and had been left with vast liabilities. He felt very bitter indeed about this.

The Respondent had become insolvent and subject to an IVA. A Bankruptcy Petition was to be presented on 13th September 02. He had no funds whatsoever and he could not afford to attend the Hearing or instruct a firm of Solicitors to represent him.

The Respondent had no intention of practising law again and requested that his name be voluntarily removed from the Roll.

33. A Mr Fulthorpe of Counsel had known the Respondent since he had been an articled clerk. He had received instructions from the Respondent over the years and had been invited to be godfather to the Respondent's son. Mr Fulthorpe had gained an understanding of the nature of the Respondent's practice. He had acted for major clients and had dealt with many Wills and complicated trusts. The Respondent had belonged to a well known and highly respected family.
34. The Respondent had suffered ill health since 1997. He had hitherto enjoyed an unblemished record. The Respondent had been ruined by what had happened and was a broken man. He had no intention to resume practice as a solicitor.
35. The Respondent had gained no financial benefit from what he had done. He was keen that it should be placed on record that the Respondent was not a man who had ever indulged in dishonesty.
36. As indicated in his own letter, the Respondent was content to be removed from the Roll of Solicitors but he was anxious to keep his good name.

The Findings of the Tribunal

37. The Tribunal found the allegations to have been substantiated. The Respondent had on the four files, the subject of detailed examination, been guilty of serious and culpable overcharging. He had formulated a pattern of billing which could be described only as taking money from funds held on behalf of clients when he felt like it. This was evidenced by the fact, for example, that 3 transfers for costs had been made on one occasion during the space of one calendar month. The amounts were in round sums and could not be justified by work which had been undertaken. Not only did that demonstrate a lack of the probity, integrity and trustworthiness required of a member of the solicitors' profession but in the Tribunal's view it amounted to a more serious state of affairs than mere recklessness. It was a dishonest use of money with which the Respondent had been entrusted. The Tribunal rejects the suggestion that the Respondent had derived no benefit from his actions. He was a sole practitioner

and the cynical appropriation of clients money was solely for his own benefit and could not be said to be for the benefit of anyone else. Such behaviour on the part of a solicitor would not be tolerated. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors. The Tribunal regretted to learn that there had been substantial claims made on the Law Society's compensation fund and that substantial monies had been paid out already.

38. The Tribunal gave close consideration to the question of costs and was anxious not to impose fixed costs on the Respondent without his having an opportunity to make representations about them. In view of the complexity of this matter, the need to seek the assistance of experts and a considerable amount of work undertaken by the Law Society's Monitoring & Investigation Unit, the Tribunal considered it right to accept the figures put forward by the Applicant and order that the Respondent pay costs in a fixed sum which included legal costs, the cost of the Investigation Accountant, disbursements and VAT.

DATED this 18th day of October 2002

on behalf of the Tribunal

R. B. Bamford
Chairman