

IN THE MATTER OF JOHN ANTHONY KAYE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A H B Holmes (in the chair)  
Mrs. H Baucher  
Mr. D E Marlow

Date of Hearing: 7th January 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 (the "OSS") by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool on 13<sup>th</sup> March 2002 that John Anthony Kaye of Erdington, Birmingham, 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 each of the following particulars, namely:-

- (i) That contrary to Rule 34 of the Solicitors' Accounts Rules 1998 (or in the alternative Rule 27 of the Solicitors' Accounts Rules 1991) the Respondent failed to produce all books of accounts to the Investigation and Compliance Officer;
- (ii) that he paid monies into client account contrary to Rule 6 of the Solicitors Accounts Rules 1991;

- (iii) that he drew monies from client account otherwise than in accordance with Rule 7 of the Solicitors' Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- (iv) that he utilised clients' funds for his own benefit;
- (v) that contrary to Rule 11 of the Solicitors' Accounts Rules he failed to keep accounts properly written up;
- (vi) that he misappropriated clients' funds;
- (vii) that he failed to account to a client in respect of interest due contrary to Rule 20 and 21 of the Solicitors' Accounts Rules 1991;
- (viii) that contrary to Rule 15 the Respondent failed to operate or in the alternative operate adequately a complaint system;
- (ix) that he failed and/or delayed in replying to correspondence received from the OSS;
- (x) that he failed and/or delayed in complying with Notice pursuant to section 44B of the Solicitors Act 1974;
- (xi) that he failed and/or delayed in applying for a remuneration certificate in breach of Principle 30.07;
- (xii) that contrary to Rule 1 of the Solicitors Practice Rules 1990 he failed to act in the best interests of his client, compromising the solicitor's integrity, the solicitor's proper standard of work and the good repute of the solicitor or the solicitors' profession.

By a supplementary statement of Jonathan Richard Goodwin dated 2<sup>nd</sup> August 2002 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that:-

- (xiii) he improperly obtained costs from a client in circumstances that he knew or ought to have known he could not justify, his client being entitled to, and having the benefit of Legal Aid;
- (xiv) he misappropriated clients' funds.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 7<sup>th</sup> January 2003 when Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Miss Prue, Senior Investigation and Compliance Officer employed by the Law Society.

At the conclusion of the hearing the Tribunal ordered that the Respondent John Anthony Kaye of Erdington, Birmingham, solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £14,500.

Preliminary Submissions of the Applicant as to whether the Substantive Hearing should proceed.

1. The Applicant said that the Respondent was aware of the hearing. The Applicant had been in correspondence with the Respondent's wife who was also a solicitor.
2. Copies of recent correspondence dated 26<sup>th</sup> November, 30<sup>th</sup> December 2002 and 6<sup>th</sup> January 2003 between the Applicant and the Respondent's wife were before the Tribunal. In addition a letter dated 30<sup>th</sup> December 2002 from Messrs Blakemores solicitors, who were representing the Respondent in criminal proceedings, confirming that the Respondent had to answer bail on 7<sup>th</sup> January 2003 and therefore could not attend the disciplinary hearing.
3. The substantive hearing had been listed for September 2002 but had been adjourned at the Respondent's request as in his doctor's view he was not fit to attend.
4. The matter had been re-listed for today and the Applicant had indicated to Mrs Kaye throughout the intervening period that he would seek to proceed.
5. It was clear from Mrs Kaye's letters that the Respondent knew of the hearing.
6. The Respondent had submitted no written representations.
7. Whether through illness or otherwise the Respondent had indicated no intention of attending the disciplinary proceedings.
8. There was no indication as to how long the criminal proceedings might take.

The Decision of the Tribunal in relation to the Preliminary Submissions

9. The Tribunal noted that the Respondent was answering bail today and therefore could not attend the hearing. The Respondent had however not sought an adjournment nor filed written representations.
10. Had there been representations made by the Respondent seeking an adjournment then the Tribunal would have given them very careful consideration, but in the absence of any such representations the Tribunal was satisfied that the matter should proceed.

**The Substantive Hearing**

The facts are set out below in paragraphs 11 to 44 below:-

11. The Respondent born in 1958 was admitted as a solicitor in 1986 and his name remained on the Roll of Solicitors. The Respondent did not currently have a Practising Certificate.
12. At all material times the Respondent carried on practice in partnership under the style of Nevills from offices at 2 Bolebridge Street, Tamworth, Staffordshire, B79 7PA.

13. Upon notice duly given to the Respondent an inspection of his books of account was carried out by the Forensic Investigation Unit of the OSS. A copy of the Report dated 20<sup>th</sup> December 2000 was before the Tribunal. The Senior Investigation and Compliance Officer, Ms N Prue, prepared a subsequent memorandum dated 28<sup>th</sup> February 2001 and a further memorandum dated 9<sup>th</sup> March 2001, copies of which were also before the Tribunal.
14. The Report of 20<sup>th</sup> December 2000 noted the matters referred to below.
15. The books of account were not in compliance with the Solicitors' Accounts Rules.
16. Despite a request from the Investigation and Compliance Officer the Respondent failed to produce for inspection the files relating to "FEB – Litigation" and "FM Exors of probate".
17. The Report identified a shortage on client funds as at 30<sup>th</sup> September 2000 in the sum of £3,131.95. The shortage arose entirely in the client matter of JN. The Respondent acted for JN in respect of her divorce.
18. The Report identified improper transfers from client to office account in respect of costs in circumstances where bills or other written intimations had not been delivered. The Investigating Accountant identified that in connection with the JN file, four transfers had been effected between the 4<sup>th</sup> September 1998 and the 22<sup>nd</sup> March 1999, when money was transferred from client to office bank account where no bills of costs had been delivered to the client. Mrs N confirmed to the OSS by letter dated 20<sup>th</sup> November 2000 that the four bills totalling £2,689.67 were never received by her. The Respondent was unable to explain why copies of the bills dated 4<sup>th</sup> September 1998 and 4<sup>th</sup> December 1998 were not contained within the client matter file. Further, he could not explain why the originals of the bills dated 11<sup>th</sup> February 1999 and 22<sup>nd</sup> March 1999 were still on the file.
19. On the 28<sup>th</sup> August 1998 an amount of £3,228.10 was credited to the client ledger account of JN with the annotation 'NEEDHAM & JAMES CHQ RE SETTLEMENT FUNDS'. Needham & James, solicitors of Stratford-upon-Avon, confirmed direct to the OSS that on 21<sup>st</sup> May 1998, three months previously, they forwarded a cheque in the amount of £3,228.10 to Nevills in connection with their costs in relation to an unconnected client matter 'DAF (formerly LM)'. The Respondent confirmed that he completed an accounting 'chitty', a copy of which was exhibited in the Investigating Accountant's Report. There was no explanation as to why the Respondent dated the chitty 28<sup>th</sup> August 1998, when the sender confirmed that the cheque was sent in May 1998 nor why he entered 'JN' on the chitty when the funds related to the matter of 'LM'
20. The relevant client ledger for Mrs N recorded certain funds received from Mrs N. The Report identified however that the client ledger did not record an additional receipt of £3,000 in cash and a cheque of £170 details of which were noted in the Report and which were acknowledged as received in a bill which Mrs N received from Nevills.

21. The relevant client ledger for Mrs N showed a payment of £500.38 dated 25<sup>th</sup> March 1999 with the narrative "CHQ PAYABLE TO CASH, C HANDED TO JN". By letter dated 20<sup>th</sup> November 2000 Mrs N wrote to the OSS that she had not received this amount and that the assertion that she had done so was untrue.
22. The Report showed that despite requests from Mrs N to be credited with interest upon the amounts of £23,000 deposited with the firm in connection with her divorce matter, the Respondent failed to account. The sum of £20,000 was paid by Mrs N to the Respondent on 20<sup>th</sup> February 1998 and that amount was not paid out by the Respondent to Mr N's solicitors until 8<sup>th</sup> February 1999 almost twelve months later. The interest was eventually paid at the behest of the Respondent's partner Mr W.
23. The Report identified the Respondent's failure to respond to Mrs N's request for a satisfactory explanation as to why professional fees were so large for dealing with an amicable divorce and further the firm's long delay in dealing with request for interest to be paid on the sum of £23,000.
24. Mrs N had provided the OSS with copies of letters which she had written to the Respondent, the first dated 9<sup>th</sup> August 2000 with subsequent letters on 25<sup>th</sup> August and 8<sup>th</sup> September 2000. By letter dated 2<sup>nd</sup> October 2000 the Respondent acknowledged the letters and said he would look into the question of interest.
25. The memorandum of the Senior Investigation and Compliance Officer dated 28<sup>th</sup> February 2001 noted the matters set out below.
26. The Respondent had acted in the probate of Ms KF and for her daughters EF and MF. The Report of 20<sup>th</sup> December 2000 had noted that two files relating to these clients had not been produced for inspection. The Respondent had told the Investigation and Compliance Officer during the inspection that both EF and MF suffered from mental problems and that upon MF's suicide he had also acted in her estate.
27. The Report had noted that the client's ledger showed payments totalling £6,670 between 22<sup>nd</sup> October 1997 and 17<sup>th</sup> June 1999 and noted as being "cash handed to EF". As the F files were not produced, the Investigation and Compliance Officer had seen during the inspection no evidence to support the transactions shown on the ledger card and no evidence to confirm that Ms EF had received the cash payments shown in the client's ledger.
28. The memorandum of 28<sup>th</sup> February 2001 related to the F probate matter. A copy of the estate accounts was before the Tribunal.
29. The Investigation and Compliance Officer was concerned with differences between items shown on the ledger and the estate accounts and she provided a summary of the same, a copy of which was before the Tribunal.
30. The main areas of concern were as follows:-
  - a) The ledger account in the estate of the late MF showed a payment of £1,966.96 to 'Chaffe Street' on 4<sup>th</sup> December 1996. That payment did not appear on the estate accounts. Chaffe Street are a firm of solicitors in

Manchester and documentation received showed that the payment had no connection with the F matter at all but related to another client 'E&H Ltd -v- Mr S M'.

- b) The ledger account showed two cheques payable to 'EF' totalling £2,350.00 together with eight cheques made payable to cash for 'EF' totalling £6,670.00 (totalling £9,020.00). However the estate accounts only showed sums paid to Ms EF as being in the sum of £4,300.00 an underpayment of £4,720.00.
  - c) The ledger account showed receipt of £5,250.00 annotated 'Anglo Leasing chq re M due to estate' which was not shown on the estate account. The Investigation and Compliance Officer ascertained that the £5,250.00 was in fact in relation to a loan taken out by the Respondent in the name of the firm, the purpose of which was stated by the Respondent on the application dated 29<sup>th</sup> July 1999 to be 'vehicle purchase'. A direct debit mandate was completed for repayments to be made from a personal Bank of Ireland account in the name of the Respondent.
31. The ledger account showed a bill of costs dated 11<sup>th</sup> May 2000 and a corresponding transfer from client to office account of £2,047.44, whereas the estate accounts showed costs of £3,142.00. A bill for £3,142.00 was sent to Miss EF dated 18<sup>th</sup> April 2000. A copy of the bill for £2,047.44 had no detailed narrative and no address.
32. The documentation received by the Investigation and Compliance Officer showed an amount of £3,810.00 due from the IronTrades Insurance Company in connection with a motor claim for Miss MF. The insurance company have stated that they were instructed by Nevills to make the settlement cheque payable to Abbey National Plc and that the cheque dated 11<sup>th</sup> March 1997, presented and paid. There was no reference to an Abbey National account in connection with the F matter.
33. In her further memorandum of 9<sup>th</sup> March 2001 the Investigation and Compliance Officer stated that a copy of the original cheque together with further information had been received from IronTrades. The cheque had apparently been paid into an Abbey National account number "X10355286KAY".

Failure to comply with Notice pursuant to Section 44B of Solicitors Act 1974 Order

34. Notice pursuant to Section 44B was served on 1<sup>st</sup> May 2001.
35. On Wednesday 2<sup>nd</sup> May 2001 the Investigation and Compliance Officer attended at the Respondent's home address to retrieve the following files:-
- a) EF – litigation
  - b) FM – Exors of probate
  - c) CVG
  - d) S Ltd (in liquidation)
  - e) GW – probate
36. The Investigation and Compliance Officer was informed by the Respondent's cleaner that he was at work. Consequently the Investigation and Compliance Officer attended

the offices at Nevills and served the Section 44B Notice on the Respondent and his partner Mr W. The Respondent confirmed that the five files requested were his matters and he said that in respect of the two matters for F, the files had been mislaid and that he did not have the papers and therefore he could not provide same to the Investigation and Compliance Officer.

37. On the 3<sup>rd</sup> May 2001 the Respondent provided the Investigation and Compliance Officer with the files for G and S. In respect of the file for GW – deceased, the Respondent indicated that the file was closed and it should be in the firm's archives but despite a search it could not be found.
38. The Respondent agreed that he had not complied with the decision in relation to the three files, those for F (litigation) and (probate) and GW deceased.
39. By letter dated 26<sup>th</sup> April 2000 a Mrs H requested on behalf of Miss EF that the Respondent apply for a remuneration certificate in respect of his charges for acting in the estate of Miss MF. The request was repeated in letters dated 15<sup>th</sup> May 2000 from Miss EF and 1<sup>st</sup> June 2000. Despite requests the Respondent failed to request a remuneration certificate.
40. On 13<sup>th</sup> July 2001 the Professional Regulation Casework Sub Committee resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.
41. By letter dated 13<sup>th</sup> December 2001, Mrs W, a former client of the Respondent, made complaint to the OSS regarding the conduct of the Respondent. Mrs W paid the sum of £1,000 to the Respondent by way of four instalments of £250, notwithstanding she was entitled to and had the benefit of Legal Aid from 17<sup>th</sup> July 1996.
42. By letter dated 13<sup>th</sup> January 2002 to the OSS, Mrs W set out the dates of the payments, and acknowledgement as to the receipt of the monies by the Respondent. The first payment was acknowledged on 3<sup>rd</sup> June 1996, the second on 30<sup>th</sup> September 1996 and the third on 1<sup>st</sup> May 1997. Mrs W was unable to find any receipt for the fourth payment.
43. Notwithstanding Legal Aid was granted on 17<sup>th</sup> July 1996 the Respondent had accepted money on account of costs from Mrs W.
44. Mr W of Nevills Solicitors wrote to Mrs W on 13<sup>th</sup> December 2001 and said 'I confirm that we have been unable to locate the sum of £250 paid by you to Mr Kaye on the 30<sup>th</sup> September 1996 and the further sum of £250 paid by you to Mr Kaye on the 1<sup>st</sup> May 1997. I have therefore reported the matter to the police.'

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

45. The allegations had not been admitted, the Respondent having remained silent in that regard. The Applicant would therefore seek to prove the allegations.
46. The Applicant was alleging dishonesty and had written on 17<sup>th</sup> April 2002 to the Respondent. In the letter the Applicant had referred to the case of Royal Brunei

Airlines v. Tan and had said that he would be putting the case on the basis of conscious impropriety which for a solicitor equated with dishonesty.

47. The Applicant would rely on the March 2002 case of Twinsectra. Using the test applied in that case it was submitted that the Respondent's conduct amounted on an objective test to dishonesty and on a subjective test the Respondent knew or ought to have known that what he was doing was wrong.
48. On 8<sup>th</sup> August 2002 the Applicant had written to the Respondent giving Notice to Admit in respect of all of the documents exhibited to statements. A Notice to Admit the remaining documents upon which the Applicant relied dated 29<sup>th</sup> July 2002 was before the Tribunal.
49. In relation to allegation (i), it was submitted that the relevant Rules for the purposes of this allegation were the Solicitors Accounts Rules 1991.
50. It was submitted that the failure to produce the F files meant that allegations (i) and subsequently (x) were made out.
51. In relation to the matter of JN and the cheque from Needham & James, it was submitted that the only logical explanation in the absence of the most persuasive explanation from the Respondent was that he withheld and misused the firm's costs due in the matter of LN to conceal his misuse of client funds in the matter of JN.
52. In relation to the four bills totalling £2,689.67, Mrs N had confirmed that she had never received those bills. Such transfers were therefore improper and in breach of the Accounts Rules.
53. In her letter Mrs N had advised which bills she had received and the Tribunal was invited to note that the second bill noted five amounts as being "received from you" totalling some £24,359, some £3,170 of which had not been accounted for and formed part of the shortage on client account."
54. The Tribunal was invited to conclude that the Respondent had misappropriated those funds and had acted with conscious impropriety which on the part of a solicitor amounted to dishonesty.
55. In relation to allegation (vii) Mrs N had not received a satisfactory response to her letters and the interest had not been paid until December 2000.
56. The payment shown on the ledger account in the estate of MF in the sum of £1,966.96 to "CHAFFE STREET" showed in the submission of the Applicant that the Respondent had utilised monies belonging to Miss F to discharge an unconnected debt of Mr SM. Such conduct was inappropriate and amounted to dishonesty.
57. The cheque from Anglo Leasing paid into MF's estate was clearly an attempt by the Respondent to introduce funds into the estate to correct sums paid out.
58. It seemed clear that the cheque from IronTrades Insurance Company had been paid into the Respondent's personal account with the Abbey National. This was dishonest.



59. In relation to the allegations contained in the supplementary statement, the date of the acknowledgement of the first sum paid, namely 3<sup>rd</sup> June 1996, was before the Legal Aid Certificate had been received although the application would have been in hand. The second two payments were clearly after the Certificate had been received. Mrs W had been unable to find a receipt for the fourth payment.
60. It was submitted that the Respondent had clearly accepted money on account of costs when he knew or ought to have known that he was not entitled to them. The Tribunal was referred to the comments of Mr W, the Respondent's former partner, in his letter of 13<sup>th</sup> December 2001.
61. In the submission of the Applicant this was a very serious case towards the top end of the scale of matters which came before the Tribunal.
62. The Respondent was guilty of serious breaches of Accounts Rules and of conscious impropriety amounting to dishonesty. This was a serious breach of the fiduciary relationship between a solicitor and his client and struck at the heart of that relationship.
63. Such conduct struck at the reputation of the profession as a whole. The public were dependant upon being able to trust the solicitors whom they instructed.
64. The submissions of the Applicant were supported by the oral evidence of Miss N Prue, Senior Investigation Accountant.

Oral Evidence of Miss Nicola Jane Prue

65. Miss Prue confirmed that the contents of the Report written following her inspection of the Respondent's books of account and the contents of her subsequent memoranda were true to the best of her knowledge and belief.
66. The accounts had not been in compliance with the Solicitors' Accounts Rules, the 1991 Rules being those which applied.
67. There had been a shortage on clients' funds. Miss Prue had been concerned by what she had found which was why she had put her Report in so quickly.
68. The matter of JN had been a particular concern. Miss Prue had met JN during the inspection. The matters relating to F had become evident later.
69. In relation to the "cash payments to Miss F", Miss Prue had taken the view that as Miss F had mental problems it would be inappropriate to write to her. Miss Prue had subsequently become aware of the complaint by Miss F pursued on her behalf by her aunt.
70. Miss Prue had seen no evidence of payment of the cash sums to Miss F. The files had not been produced.

71. There had been no evidence to explain the discrepancies between the ledger and the estate accounts.
72. The sum from Anglo Leasing appeared to be a practice loan taken out by the Respondent. The sum would have needed consciously posting to the F ledger and in Miss Prue's opinion that had been done to replace money.
73. The Respondent had asked for the IronTrades cheque to be paid to the Abbey National. The account into which it had been paid finished with the letters KAY which suggested that it was the Respondent's personal account.

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

74. Having considered carefully the documentation which the Respondent had not sought to challenge, the oral evidence of Miss Prue and the submissions of the Applicant the Tribunal found the allegations to have been substantiated as set out below. Allegations (ii) to (vii) and (ix) to (xiv) were fully substantiated, allegation (i) was substantiated in the alternative namely in relation to Rule 27 of the Solicitors' Accounts Rules 1991 and allegation (viii) was substantiated in the alternative namely that contrary to Rule 15 the Respondent failed to operate adequately a complaint system.
75. Applying the tests in the case of Twinsectra, as submitted by the Applicant, the Tribunal was satisfied that the Respondent had behaved dishonestly.
76. In relation to the cheque from Needham & James, the Tribunal was satisfied in the absence of any explanation from the Respondent that he had paid costs due to the firm in an unrelated matter into the client account of JN to conceal his misuse of funds in that matter. The JN ledger did not record the full amount of funds received from her. The Tribunal was also satisfied that the Respondent had transferred sums by way of costs without delivering the four bills referred to in the Report. He had failed to account to JN for interest and had failed to deal adequately with her enquiry as to why his fees were so large. The Respondent's misuse of funds in this matter and his attempt to conceal this misuse by payment in of the firm's costs in an unrelated matter were dishonest. In relation to the matter of Ms F, the Tribunal was satisfied that the Respondent had paid a sum from the estate of the late MF to settle a debt relating to another client Mr SM. The Tribunal was satisfied from the documentary evidence and the evidence of Miss Prue that the cheque from IronTrades which was due to the estate matter of F had been paid by the Respondent into his personal Abbey National account. The Respondent had introduced funds into the F client account which had been obtained by way of a practice loan stated to be for a vehicle purchase. The Respondent's conduct in relation to the matter of F was clearly dishonest. Any dishonesty by a solicitor towards a client struck at the heart of the profession's relationship with the public but particularly so where the client was, as in this case, under a disability.

### **Previous Appearance before the Tribunal.**

77. At a hearing on 26<sup>th</sup> September 1996 the following allegations had been substantiated against the Respondent that he had been guilty of conduct unbecoming a solicitor in

each of the following particulars, namely, that he had:

- (i) failed to pay Counsels' fees as the same became due;
- (ii) failed to reply to correspondence from the Solicitors Complaints Bureau.

The Tribunal on that occasion considered that the Respondent's failure to behave in a proper professional manner towards his own professional body and to act with fundamental common sense meant that he had brought the disciplinary proceedings upon himself. He had caused a great deal of trouble, inconvenience and expense to Counsel and to his own professional body. The Tribunal considered it right that a fine should be imposed upon the Respondent in the sum of £1,000 together with costs.

Hearing on 7<sup>th</sup> January 2003

- 78. The Tribunal on 7<sup>th</sup> January 2003 had found that the Respondent had behaved dishonestly towards his clients. No explanation or mitigation had been put forward by the Respondent and the Tribunal considered that this was misconduct of the most serious kind. It damaged not only the reputation of the Respondent but of the whole profession. It was right that the ultimate sanction be imposed.
- 79. The Tribunal ordered that the Respondent John Anthony Kaye of Erdington, Birmingham, 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 £14,500.

DATED this 14<sup>th</sup> day of February 2003  
on behalf of the Tribunal

A H B Holmes  
Chairman