

IN THE MATTER OF CHARLES JOHN LINDLEY PENN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr. R. B. Bamford (in the chair)  
Mr. D. J. Leverton  
Mr. M. G. Taylor CBE

Date of Hearing: 6th August 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 Stuart Roger Turner solicitor and partner in the firm of Lonsdales Solicitors, 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on the 14<sup>th</sup> March 2002 that Charles John Lindley Penn of Corporation Street, Coventry 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:-

1. That the Respondent has failed to deliver an Accountant's Report in accordance with Section 34 of the Solicitors' Act 1974 and the Rules thereunder.
2. That the Respondent has failed to respond to correspondence from the OSS.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stuart Roger Turner solicitor and partner in the firm of Lonsdales Solicitors, 342 Lytham Road, Blackpool, Lancashire, FY4 1DW appeared as the Applicant and the Respondent was represented by Roger Field Solicitor and Consultant with the firm of Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands, DY1 1EY.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent, Charles John Lindley Penn of Corporation Street, Coventry solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,039.65. In addition if the Respondent has not filed the outstanding Accountant's Report or has not obtained a waiver from the Law Society in respect thereof within 3 months of today's date, then the Respondent will be suspended from practice indefinitely.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. The Respondent, born in 1935, was admitted as a solicitor in 1961. At the material times he carried on in practice as a sole practitioner in the firm of John Penn & Co of 42 – 44 Hill Street, Coventry, latterly he had been a Consultant in the firm of Field Overell, Solicitors of 8 – 10 Corporation Street, Coventry.
2. For the period ended 31<sup>st</sup> October 2000 relating to his practice as a sole principal, the Respondent was due to file his Annual Accountant's Report with the Law Society by 30<sup>th</sup> April 2001. The Respondent failed to do so.
3. The OSS wrote to the Respondent on the 17<sup>th</sup> August 2001 requesting his explanation for this.
4. The Respondent did not respond to that letter and so the OSS wrote to him again on the 5<sup>th</sup> September 2001. The OSS has not received any response from the Respondent.
5. On the 31<sup>st</sup> October 2001 an Adjudicator of the OSS directed that without further notice disciplinary proceedings would be taken against the Respondent within 28 days of 31<sup>st</sup> October 2001 if the Respondent did not deliver the outstanding Accountant's Report. The Respondent did not do so.

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

6. The Respondent had been guilty of a fundamental regulatory breach in that he had not filed the Accountant's Report which he was required to do by statute and the rules made thereunder. Further he had failed to reply to correspondence addressed to him by his own professional body.
7. At the date of the hearing the Accountant's Report remained outstanding.

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

8. The Respondent was 67 years of age and had been on the Roll of Solicitors for 41 years. He had never before been subject to disciplinary proceedings and it was a matter of great sadness that he should be appearing before the Tribunal on this occasion.
9. The Respondent was a family man with grown up children. In 1966 he had set up a modest firm which had enjoyed some success and enjoyed a loyal and good client

following. It had always been the Respondent's intention to retire from practice as a solicitor at the age of 65 and embark upon a bed and breakfast business together with his wife.

10. At the age of 65 the Respondent had entered into talks about merging his practice with a larger firm in Coventry. The merger had been agreed and had taken place. The Respondent had been retained as a consultant in order to ensure that his existing clientele was comfortable with its introduction to the merged firm. Thereafter it was intended that the Respondent would sever his connection with that firm.
11. The Respondent had submitted the required Accountant's Reports in the respect of his sole practice for many years without any difficulty or any problem.
12. The Report which was outstanding related to the period immediately before the merger of his firm with a Coventry firm.
13. The Respondent had at the time of the merger to move his firm from its offices to the offices of the larger Coventry firm. At that time he had been subject to a great deal of harassment from his landlord and as a result he had not been able to maintain an orderly and properly planned removal. Some important books of account had been mislaid. The Respondent had found himself in the position of being unable to deliver to his Reporting Accountant all of the documents they needed to enable them to complete an Annual Accountant's Report.
14. Following the merger of the two firms the Respondent had tried to piece together the missing information but had not been able to do so.
15. It was important to note that when the Coventry firm considered the merger its own accountants had carried out an audit of the Respondent's firm and no problems had come to light.
16. The Respondent had become increasingly worried about the situation but had not taken any proper action. It was not until a decision had been taken to refer the Respondent to disciplinary proceedings did he explain what had happened to the Law Society and had considered asking for a waiver. It was a matter for regret that the Respondent had not at an early stage taken proper advice.
17. The Respondent had changed his reporting accountants so that he was instructing the accountants instructed by the Coventry firm. It had been hoped that by the time of the disciplinary hearing either an Accountant's Report would have been filed or a formal waiver would have been approved. Regrettably neither of those had occurred.
18. Comfort could be drawn from the fact that no financial problems had been discovered following the merger. The Coventry firm's Annual Report had been filed in April 2001 and was satisfactorily. That report related in part to a period when the two firms had been merged.
19. It was said on behalf of the Respondent that the Accountant's Report or the waiver would be dealt with within the two months following the hearing and possibly the matter would be satisfactorily concluded within 28 days.

20. The whole situation represented a sad end to an unblemished career in the law for the Respondent and it was hoped that the Tribunal would feel able to give the Respondent a period of six weeks to address the outstanding issue.
21. The Respondent was ashamed and sorry to be appearing before the Tribunal. He had not simply abdicated responsibility but had found himself confronted with considerable difficulties.

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

22. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Tribunal recognises that this matter represents a very sad end to the Respondent's career in the law. Compliance with the important statutory requirement that a solicitor who holds clients' money must file with the Law Society an Accountant's Report was important to enable the Law Society to fulfil its duties as a regulator and to ensure that large sums of money held by solicitors on behalf of clients were not at any time placed in jeopardy. The Respondent would be well aware of the seriousness with which the Tribunal views the failure of a solicitor to respond to correspondence addressed to him by his own professional body.
23. The Tribunal concluded that it would be right to mark the Respondent's failures by the imposition of a fine of £1,000 and they further ordered him to pay the costs of and incidental to the application and enquiry in the fixed sum agreed by the Respondent.
24. In addition if the Respondent has not filed the outstanding Accountant's Report or has not obtained a waiver from the Law Society in respect thereof within 3 months from the 6<sup>th</sup> August 2002 then the Respondent will be suspended from practice indefinitely.
25. For the avoidance of doubt the Tribunal requires the Accountant's Report to be filed or the waiver obtained by the 7<sup>th</sup> November 2002. The Tribunal requires the Respondent to confirm to the Tribunal and to the Applicant immediately when he has sent the Accountant's Report to the Law Society or when he receives a waiver from the Law Society.
26. The Tribunal considered that it would be right to allow the Respondent the period of 3 months to conclude this outstanding regulatory requirement in view of the fact that the hearing had taken place at the height of the holiday season and it was recognised that persons required to deal with such matters were not always readily available at such time.

DATED this 4<sup>th</sup> day of September 2002

on behalf of the Tribunal

R. B. Bamford  
Chairman