

IN THE MATTER OF JONATHAN MICHAEL DUFF, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A Gaynor-Smith (in the chair)  
Mr S N Jones  
Lady Bonham Carter

Date of Hearing: 20th May 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 David Elywn Barton solicitor and partner in the firm of Messrs Whitehead Monckton, solicitors of 72 King Street, Maidstone, Kent, ME14 1BL (now of David Barton, Solicitor Advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE) on 19<sup>th</sup> July 2002 that Jonathan Michael Duff of Kirkham, Nr Preston, Lancashire) solicitor (now of Norley, Cheshire) 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 unbefitting a solicitor by virtue of his conviction at Manchester Crown Court on 1<sup>st</sup> July 2002 for failing to disclose knowledge or suspicion of money laundering and that he had breached the provisions of Rule 1 of the Solicitors' Practice Rules 1990 in that he had compromised or impaired his good repute as well as that of the solicitors' profession.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 20<sup>th</sup> May 2003 when David Barton Solicitor Advocate of 5 Romney

Place, Maidstone, Kent, ME15 6LE appeared as the Applicant and the Respondent did not appear and was not represented.

At the conclusion of the hearing the Tribunal ordered that the Respondent Jonathan Michael Duff now of Norley, Cheshire (formerly of Kirkham, Nr Preston, Lancashire) 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 £3,801.96.

The facts are set out in paragraphs 1 to 4 hereunder: -

1. The Respondent, born in 1959, was admitted as a solicitor in 1984 and his name remained on the Roll of Solicitors.
2. On 1<sup>st</sup> July 2002 the Respondent was convicted at Manchester Crown Court of failure to disclose knowledge or suspicion of money laundering. The Respondent pleaded guilty to an indictment containing two such counts and was sentenced to a term of imprisonment for six months on the first count and three months on the second, such terms to run concurrently. A copy of the Certificate of Conviction and of the sentencing remarks of His Honour Judge Hammond were before the Tribunal.
3. The Respondent had unsuccessfully appealed against the sentence.
4. At a hearing before the Tribunal on 8<sup>th</sup> April 2003 the Respondent had sought an adjournment of the substantive hearing pending an appeal against conviction. The Tribunal had refused that application.

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

5. The Applicant drew to the attention of the Tribunal a faxed letter dated 20<sup>th</sup> May 2003 from the Respondent to the Applicant explaining his non-attendance on the grounds of ill-health.
6. In the submission of the Applicant the fact of the Respondent's conviction and committal to prison supported the allegation of conduct unbecoming and the allegation of a breach of Rule 1.
7. The Tribunal was referred to the sentencing remarks of His Honour Judge Hammond:-
 

"Money laundering takes many forms. Depositing of money and extracting it from a solicitor's client's account is one of them... Whilst it is... at the lower end of this type of offence because of the amount involved and the amount of transactions that you failed to reveal, nonetheless, substantial sums were involved... there must be a sentence of imprisonment which I cannot suspend, because the circumstances are not sufficiently unusual for this type of offence, indeed they typify this type of offence."
8. There had been entries into the Respondent's client account of the sums of £10,000 and £60,000 and shortly afterwards withdrawals of slightly smaller sums.

9. The Applicant was certain that the basis of the guilty plea and the issues over the interpretation of the law would have been placed before the sentencing Judge.
10. The matters contained in the Respondent's statement of 19<sup>th</sup> July 2002 were matters of explanation or mitigation but the Respondent could not seek to go behind the fact of his conviction and imprisonment.
11. The Law Society took a serious view of this matter. The Respondent had been advising two drug traffickers. He had deposited £70,000 in a client account in a branch of a bank which he did not normally use. Money had also been entered into a ledger with a fictitious name.
12. The Applicant sought his fixed costs and gave to the Tribunal details of how the costs had been incurred.

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

13. The submissions of the Respondent were contained in his statement of 19<sup>th</sup> July 2002 which was before the Tribunal and is summarised below.
14. The Respondent confirmed the fact of his conviction and sentence but stressed that he did not accept that he had been guilty of anything.
15. The Respondent gave details of his professional and family background and set out how he had come to act for the clients before their arrest had led to the prosecution against the Respondent.
16. Following the development of the prosecution case against his clients the Respondent had begun to wonder whether there were any obligations placed upon him in that he or his firm might in the past have been unwittingly used for the purpose of drug money laundering.
17. Having considered the matter the Respondent had concluded that he did not have an obligation of disclosure as the transactions were in the past.
18. Following his former clients' trial the Respondent had sought legal advice and his solicitor had confirmed the Respondent's interpretation that there was no obligation to report. The Respondent exhibited to his statement a witness statement of his solicitor to assist the Tribunal.
19. The Skeleton Argument of the Respondent's Leading Counsel in that regard was also exhibited to the Respondent's statement.
20. The Respondent then set out in his statement the process which had led him to plead guilty on two counts despite his certainty that he was not in fact guilty. Exhibited to his statement was a note he had prepared of the situation he found himself in on 1<sup>st</sup> July 2002. He contended that he had pleaded guilty under duress.
21. The Respondent had also exhibited to his statement two newspaper reports of his case.

22. Despite having pleaded guilty the Respondent intended to appeal against his conviction. The Respondent asked the Tribunal to consider his case in the light of the case of Mrs Sally Clark who had been suspended by the Tribunal whilst arranging to appeal her conviction. The Respondent asked that the Tribunal consider making the same order in his case.

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

23. The Tribunal had considered with great care the statement of the Respondent dated 19<sup>th</sup> July 2002. In that statement the Respondent had admitted the facts of his conviction and sentence. He had not specifically denied the allegations but for the avoidance of doubt the Tribunal considered that the Respondent could not go behind the facts of his conviction and sentence and the Tribunal found the allegations to have been substantiated.

### **Previous appearance before the Tribunal on 25<sup>th</sup> September 2001**

24. On 25<sup>th</sup> September 2001 the following allegations had been found substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following respects:-
- i) he failed to produce such books of account, and other documents as were requested to be so produced by Mr S Hankin, Investigation and Compliance Officer, duly authorised to inspect them;
  - ii) he acted in breach of the provisions of Rules 7 and 8 of the Solicitors' Accounts Rules 1991 in that he had drawn from clients' account monies other than in accordance with the said Rules and utilised the same for his own benefit;
  - iii) he compromised or impaired, or was likely so to do, his independence or integrity, and the good repute of the solicitor and of the solicitors' profession;
  - iv) he failed to disclose to clients with complete frankness circumstances in which he would or may obtain a personal interest or benefit in a transaction;
  - v) he failed to account to his clients for commission received, in breach of Rule 10 of the Solicitors' Practice Rules 1990;
  - vi) he acted in breach of the provisions of Rule 4 of the Solicitors' Accounts Rules 1991 in that he paid into client account monies other than those permitted by the said Rule.
25. On 25<sup>th</sup> September 2001 the Tribunal found that the Respondent had not been entirely frank with his clients and had run an account under a fictitious name within his client account. The Tribunal on that occasion however considered that the very high level of proof required to establish dishonesty had not been met.
26. A number of serious allegations had however been substantiated and these allegations went to the Respondent's attitude to the running of the practice, his attitude to his

accounts and his lack of frankness to his clients. All these matters went to impugn his integrity.

27. The Respondent had mixed his own money with client account. The ledger narratives for the account with the fictitious name would deceive anyone looking at them. His cavalier and reckless attitude to accounts and his lack of frankness were matters of great concern to the Tribunal. The Tribunal considered that the appropriate order was a period of suspension from practice and ordered that the Respondent be suspended from practice as a solicitor for the period of two years to commence on 25<sup>th</sup> September 2001 and ordered him to pay the Applicant's costs.

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28. The Tribunal found the allegations substantiated. The Respondent in his statement had addressed the Tribunal on the issue of sentence, drawing a comparison with the case of Mrs Sally Clark. Decisions on sentence however depended on the circumstances in each case. The circumstances in the Respondent's case were different from those in the case of Mrs Clark. The Respondent's conviction had arisen from his conduct while in the course of acting as a solicitor. He had pleaded guilty. He had a previous appearance before the Tribunal where serious allegations had been substantiated and indeed he was currently suspended from practice as a result. The Tribunal would not seek to go behind the Respondent's conviction and the Tribunal noted the sentencing remarks of the Learned Judge. Conviction for this serious offence relating to his practice meant that it was not appropriate for the Respondent's name to remain on the Roll of Solicitors. Should the Respondent be successful in his appeal then it would be open to him to return to the Tribunal in very different circumstances and asked for the matter to be reconsidered. The Tribunal had also considered the Applicant's costs and considered it right that these be paid by the Respondent.
29. The Tribunal ordered that the Respondent Jonathan Michael Duff of Norley, Cheshire (formerly of Kirkham, Nr Preston, Lancashire) 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 £3,801.96.

DATED this 7th day of July 2003  
on behalf of the Tribunal

A Gaynor Smith  
Chairman