

IN THE MATTER OF PETER FRANCIS MILLER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr S N Jones
Mrs C Pickering

Date of Hearing: 10th July 2003

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 David Elwyn Barton, solicitor formerly of Monckton House, 72 King Street, Maidstone, Kent, ME14 1BL (but subsequently of 5 Romney Place, Maidstone, Kent, ME15 6LE) on 25th October 2002 that Peter Francis Miller of Bromley, Kent, 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 were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:-

- (a) He compromised or impaired, or was likely so to do, his integrity;
- (b) He compromised or impaired, or was likely so to do, his good repute and that of the solicitors' profession;
- (c) He had failed to act towards another lawyer, Dr Alex Fischer, with frankness and good faith;
- (d) He had failed to account to Mr MD for monies due to him;
- (e) He had misappropriated or alternatively withheld monies due to Mr MD;
- (f) He had given Mr MD and Mr DD an untrue explanation as to why he had not accounted for money;
- (g) He had failed to account for interest in accordance with Rule 20 of the Solicitors Accounts Rules 1991

It was alleged that the Respondent had been dishonest in his dealings with Mr MD and Dr Fischer.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th July 2003 when David Elwyn Barton appeared as the Applicant. The Respondent did not appear and was represented.

The Tribunal had on an earlier occasion made an Order for Substituted Service. Notice of the proceedings was to have been published in a newspaper circulating in the area in which the Respondent was last known to be and in The Law Society's Gazette. The Applicant explained to the Tribunal that he had not arranged for a notice to be placed in The Law Society's Gazette as he had ascertained from The Law Society that it did not have an address to which the Gazette could be sent. He had arranged for the notice to be published in a local newspaper. A copy of that notice was before the Tribunal. The Applicant had also written to a solicitor who at first had said he would pass the disciplinary proceedings papers to the Respondent. He had had a change of heart which the Applicant had indicated to him he found disappointing and obstructive. The Applicant had made enquiries of the solicitor who owned a property in Spain where it was believed the Respondent might have been. There was no positive result from such enquiry.

The Tribunal concluded that the Applicant technically had not complied with the Order for Substituted Service. Publication of the notice in The Law Society's Gazette would have drawn the matter to the notice of others who might have been in a position to put it before the Respondent. However, in all the circumstances, the Tribunal was prepared to accept that the advertisement in a local newspaper could be regarded as proper substituted service. It considered that it was improbable that publication of the notice in The Law Society's Gazette would have had any practical effect.

The Tribunal ordered that the substantive hearing proceed in the absence of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Peter Francis Miller of Bromley, Kent, 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 £9,723.46.

The facts are set out in paragraphs 1 to 20 hereunder: -

1. The Respondent, born in 1953, was admitted as a solicitor in 1978. At the material times he practised under the style of Peter F Miller Solicitor of 91 Frant Road, Tunbridge Wells, Kent, TN2 5LP. He practised as a sole principal with four consultants. His "Fiscal Consultant (Guernsey)" was RK. RK was involved in the financial transactions to which the allegations referred.
2. On 5th December 1994 Mrs SR died. She had made a Will in which she made an absolute gift of her money held in a Swiss bank account with Credit Suisse to Mr MD and Mrs M. The money was to be divided equally between them.
3. The Respondent was Mr MD's nephew and Mrs M's son. Mrs M died on 24th November 1999 and her Will appointed the Respondent her sole executor.

4. A Swiss lawyer, Dr Alex Fischer, had been managing SR's Swiss funds for some time. When the account was closed in November 1996 the credit balance was Swiss Francs 266,303.35.
5. Dr Fischer was SR's Swiss lawyer. The Respondent notified Dr Fischer of the death of SR on 15th December 1995 and sent him an "Acte de Notoriete" from her lawyer in Paris which confirmed the death and also that the two beneficiaries named in her Will were to receive the proceeds of the Swiss account. The Respondent's purpose in notifying Dr Fischer of the death was to obtain his assistance in arranging the practicalities of withdrawing the money held in the Swiss bank account.
6. The Respondent wrote on paper headed "Peter F Miller Solicitor". At the bottom of the letter appeared the names of his practice consultants. He also wrote on 17th January 1996, 12th March 1996, 17th April 1996, 29th May 1996 and 27th November 1996 on similar letterhead. He thus held himself out as a solicitor at all relevant times.
7. The Respondent wrote to Dr Fischer on 17th January 1996 and stated:-

"Both my mother and my uncle are rather elderly and I would be grateful if you would make the point to the bank that their personal attendance may cause some difficulty. I would, however, be more than willing to represent them, and I would ask whether the bank has a formal document of authorisation should the English powers of attorney I already hold be insufficient".
8. On 1st February 1996 Dr Fischer wrote to the Respondent to inform him of the bank's requirements for the release of the money. The Respondent wrote to Dr Fischer on 12th March 1996 and stated that:- "... my mother and my uncle are putting me under pressure to deal with this outstanding matter".
9. On 4th April 1996 Dr Fischer wrote to the Respondent to enclose draft special powers of attorney which, once executed, would enable the bank to release the money to Dr Fischer and thereafter to the Respondent.
10. On 17th April 1996 the Respondent sent Dr Fischer the two forms of power of attorney executed by his mother and his uncle. That of his uncle was dated 11th April 1996 and that of his mother 17th April 1996.
11. The Respondent travelled to meet with Dr Fischer in Basel on 26th April 1996.
12. On 27th November 1996 the Respondent sent a fax to Dr Fischer giving him instructions as to where to send the money. Dr Fischer sent the sum of £59,664.25 to each of the two specified accounts. One payment went to an account in the name of the Respondent's mother and the other to one in the name of the Respondent's Fiscal Consultant in Guernsey.
13. In about August 1997 the Respondent made a cash payment to his uncle, Mr MD, of £20,000. Following a failure to account for the balance, a complaint was made to the OSS by Mr MD's son and that led to an attempt by the OSS to make a thorough

inquiry of the Respondent as to what had happened to the money. The Respondent did not provide an explanation.

14. The Respondent met with Mr MD and his son, Mr DD, in May 2000. Mr DD explained that the Respondent had told him that approximately £20,000 had been taken from him at the border by Customs & Excise because he did not hold the correct papers and that he would need to instruct another solicitor to recover the money. Mr DD went on to say that he wrote to the Respondent on 21st March 2000 to enquire when the overdue payment would be made. It appeared from this letter that Mr DD believed that only £20,000 was owed to his father. Mr DD noted that the Respondent had previously agreed that the funds would be paid by September 1999 and he requested payment within 30 days. The Respondent wrote to Mr MD on 17th May 2000 explaining that it would be easier for him to pay out his inheritance when it was finalised.
15. When Mr MD and Mr DD received papers from Dr Fischer the true position was revealed to them. In his statement Dr Fischer said (after he received the two powers of attorney):-

“I then contacted the bank in Basel several times and an exchange of correspondence ensued (also with Peter F Miller). In a telefax of 12th March 1996, Peter F Miller informed me that his mother and uncle were putting him under some pressure to advance the issue. After further exchanges of correspondence, I sent the draft of a revised text of a power of attorney as it had been accepted by the bank by telefax on 4th April 1996. In a telefax of 17th April 1996 I received the special powers of attorney from Mr Miller signed by his mother and uncle. On 26th April 1996 Mr Miller visited me in Basel and we had a joint meeting with representatives of Credit Suisse. On this occasion, both original powers of attorney were handed over to the bank. It then transpired that the bank required further documents. Because the deceased had appointed an executor for her Will in France, a special declaration from this executor was requested. This is, however, of no further interest in the present case. The powers of attorney and the verification of signatures then had to be validated by Barclays Bank. In a letter of 29th May 1999 Mr Miller sent me a new power of attorney from his uncle. By November 1996 numerous further exchanges of correspondence had ensued because Credit Suisse required additional notarial confirmation from France. On 26th November 1996 I requested details of his mother’s and his uncle’s bank accounts from Mr Miller. In a telefax of 27th November 1999 Mr Miller named two bank accounts. The first was in the name of his mother. The second was an account with the Royal Bank of Scotland in St Peter Port in Guernsey. This account was in the name of “RK Clients Account”. On 20th November 1996 I had asked Credit Suisse to close the account and deposit of the deceased and to transfer the money to my notary client account 15372 with Dreyfus Sons & Co Ltd Banquiers in Basel. The balance of the account with Credit Suisse was CHF 266,303.35. After receipt of this money, I charged a honorarium of CHF 2,587.35 (including VAT) for my services. I divided the remaining sum of CHF 263,716 into two and transferred CHF 131,858 (respectively GBP 59,664.25) into each of the two accounts named by

Mr Miller. The corresponding payment instructions and debit advices are also enclosed. There were no cash transactions.

After these transfers I heard nothing more in this case. It was only in April 2000 that Mr MD's son informed me that his father had never received the money.

Based on the documents, I can only conclude that Mr Miller deceived me intentionally. Seeing that Mr Miller is an English solicitor, I naturally assumed that the account reference in St Peter Port related to his uncle. Because this was evidently not the case, we appear to be dealing with a criminal offence.”

16. In his statement Mr DD said that after Mr MD and Mrs M had agreed that the Respondent should help to trace and secure the funds in Switzerland to which they were entitled, over a period of time Mr MD and Mr DD made a number of enquiries of the Respondent by telephone to see what progress he was making. The Respondent would invariably decline to talk on the telephone, expressing concern that someone might overhear. According to the Respondent there had been customs and tax implications which they had to be watchful about. With hindsight Mr DD thought that sounded very peculiar but at the time his father believed that the Respondent was acting in his best interests and did not question any of this.
17. When in August 1997 the Respondent went to Mr MD's house and paid him the sum of £20,000 in cash he informed Mr MD that there was further money to come. That accorded with Mr MD's belief.
18. During the following year, 1998, the Respondent suggested that he would return to Switzerland to see if he could secure payment of the balance of the money. In July 1998 he telephoned Mr MD to inform them that his proposed trip to Switzerland had to be cancelled and rescheduled. The Respondent reported that he had been to Switzerland and that he had managed to obtain a further £20,000. He told Mr MD that he had attempted to leave Switzerland with that amount of money but that it had been seized from him by Swiss customs because he did not have the proper paperwork to account for being in possession of it.
19. It was at this point that Mr DD became suspicious and made enquiry of Dr Fischer.
20. The Respondent did not account to Mr MD for any interest

The Submissions of the Applicant

21. As was plain from the allegations set out in the Rule 4 Statement, the Applicant did allege that the Respondent had been dishonest. There was no formal evidence which could be placed before the Tribunal as to where the monies that had been sent to the RK account in Guernsey went after that.
22. It was clear that the Respondent had lied both to Dr Fischer and Mr MD and Mr DD.
23. The Respondent's conduct amounted to serious conduct unbefitting a solicitor.

The Submissions of the Respondent

24. The Respondent made no submissions.

The Findings of the Tribunal

25. The Tribunal find all of the allegations to have been substantiated.
26. On 28th November 1996 the Tribunal found the following allegations to have been substantiated against the Respondent (together with his then partner). The allegations were that the Respondent and his then partner had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that they had:-
- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors' Accounts Rules 1991;
 - (ii) contrary to Rule 8 of the Solicitors' Accounts Rules 1991 drawn money out of client account other than as permitted by Rule 7 of the said Rules;
 - (iii) utilised clients' funds for the purposes of other clients.
27. On that occasion the Tribunal found all of the allegations to have been substantiated including the allegation that his then partner had been guilty of conduct unbecoming a solicitor. The Respondent admitted the allegations as they stood and his then partner admitted the factual basis upon which those allegations were formulated.
28. In a nutshell, the books of account of the Respondents' firm were in a state of disarray. It was fundamental to a solicitor's practice that its books of account be kept both up-to-date and with great accuracy and fully in compliance with the Solicitors Accounts Rules. That was an onerous responsibility which fell upon the shoulders of all equity partners. It followed that if breaches occurred, all equity partners were responsible and none could escape an allegation of conduct unbecoming a solicitor if breaches of the Accounts Rules had taken place and, indeed, the firm's accounting records had been in disarray over a fairly long period of time.
29. The firm had suffered a long history of accounting problems. Both partners had considered it sufficient simply to employ an apparently reputable and capable cashier and neither had taken it upon himself or herself to take a deep interest in the activities of the cashier and, indeed, to set targets or objectives or personally to monitor the work undertaken by him. The monthly acceptance of a cashier's report did not reflect an adequate interest in the firm's books of account bearing in mind the previous unfortunate history of disarray.
30. The Tribunal listened to considerable attacks upon the form of the Investigation Accountant's Report. The Tribunal took the view that the Law Society's Investigation Accountant was an expert in his field. He was presented with a firm who had a long history of accounting deficiency, who had not put matters entirely right, and where a combination of late posting and inaccurate recording had led to the concealment, albeit inadvertently as it transpired, of debit balances. The Tribunal was aware of the great concern of the Law Society and, indeed, of the solicitors' profession about the considerable calls upon the Law Society's Compensation Fund brought about by the misappropriation by solicitors of clients' money. The Law Society itself had initiated

prevention of fraud initiatives because of its great concern and the Tribunal felt it had to be remembered that the Investigation Accountant had inspected the Respondents' books at the time of this great concern.

31. The Respondents themselves must have been equally aware of the concern about the substantial dishonest practices of a small minority of solicitors and they themselves had to accept that to the extent that they did not personally make strenuous efforts to ensure that matters were put right they were the authors of their own misfortune.
32. The Tribunal would continue to expect that Investigation Accountant's Reports placed before the Tribunal should reflect the fundamental principles of the accountancy profession that honesty, fair-dealing and truthfulness were of the utmost importance and that a member of that profession should strive for objectivity in all professional and business judgements.
33. In the circumstances the Tribunal considered it right that the Respondent should pay a fine of £4,500 and that his then partner should pay a fine of £1,000. In view of the allegation that was withdrawn by the applicant and the escalation of work in the matter engendered by the nature of that allegation and the evidence supporting it, the Tribunal considered it right that the Respondents should pay one half of the Law Society's costs in the same proportions as their share in the partnership, namely three-quarters by the Respondent and one-quarter by his then partner. The Tribunal considered that the respective degree of culpability of each of the Respondents was properly reflected in their Orders.
34. The Tribunal take particular note of the fact that the Respondent clearly took no notice of the Tribunal's clear warning to him in 1997 that honesty, fair dealing and truthfulness were of the utmost importance.
35. The Respondent's behaviour appears to have been extraordinary. On the face he had lied to Dr Fischer to divert monies due to his uncle to an account in the name of his "Fiscal Consultant (Guernsey)". He had told his uncle that following a visit to Switzerland when he successfully secured monies due to the uncle he was stopped when attempting to leave Switzerland with that money and it had been seized by the Swiss authorities.
36. The Respondent's behaviour would have been recognised by any right minded member of the solicitors' profession as being wholly dishonest and despicable. It was clear to the Tribunal that the Respondent himself was in no doubt that his actions were dishonest as is evidenced by his lack of co-operation with his professional body and his failure to respond to the disciplinary proceedings and the fact that he has rendered himself unobtainable.
37. The Tribunal had before it copies of correspondence passing between the Respondent and The Law Society. The Tribunal did note the Respondent's contention that his actions were not carried out in his capacity as a solicitor. The Tribunal does not accept that contention; in the first place the letters addressed to Dr Fischer in Switzerland were written on paper which described the Respondent as a solicitor. In the second place it is a requirement of a member of the solicitors' profession to act at all times with complete integrity, probity and trustworthiness and a failure to act in

accordance with those high standards, whether in a solicitor's professional or private life, will be matters that will be drawn to the attention to and considered by his own professional body and this disciplinary tribunal.

38. The Tribunal deprecated most strongly the Respondent's behaviour and ordered that he be struck off the Roll of Solicitors and further ordered that he should pay the Applicant's costs which the Tribunal fixed in the sum provided to them by the Applicant.

DATED this 8th day of September 2003
on behalf of the Tribunal

L N Gilford
Chairman