

IN THE MATTER OF KEITH ANTHONY CURRAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs E Stanley (in the chair)
Mr. I R Woolfe
Mrs. C Pickering

Date of Hearing: 24th June 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 (the "OSS") by Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool on 24th January 2003 that Keith Anthony Curran of Branksome, Poole, Dorset, 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 he withdrew money from a client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;
- (ii) that he utilised clients' funds for the benefit of other clients;
- (iii) that he misappropriated clients' funds;
- (iv) that he made representation(s) to the Office for the Supervision of Solicitors by letter dated 7th November 2001 that were misleading and/or inaccurate;

- (v) that he acted in a way that was fraudulent, deceitful or otherwise contrary to his position as a solicitor, in that he forged the signature of a Mr G for the purposes of opening a building society account.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 24th June 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 appeared in person.

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

At the conclusion of the hearing the Tribunal ordered that the Respondent Keith Anthony Curran of Branksome, Poole, Dorset, 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 £3,000.

The facts are set out in paragraphs 1 to 12 hereunder: -

1. The Respondent, born in 1956, was admitted as a solicitor in 1983 and his name remained on the Roll of Solicitors. At all material times the Respondent was employed as an assistant solicitor with Harold G Walker & Co. of Office Chambers, Lansdowne House, Christchurch Road, Bournemouth, Dorset, BH1 3JT. In view of the Respondent's gross misconduct he was dismissed on 17th April 2002.
2. By letter dated 28th September 2001 Messrs Harold G Walker & Company notified the OSS concerning the conduct of the Respondent who was employed as an assistant solicitor with that firm. The letter identified that on 24th September 2001 it had come to the attention of the partner in charge of the branch office where the Respondent worked that the Respondent had breached the Solicitors' Accounts Rules in that he had utilised clients' funds for the benefit of another client.
3. By letter dated 19th October 2001 the OSS wrote to the Respondent seeking his explanation.
4. By letter dated 29th October 2001 Mr N, the partner in charge at Wimborne, where the Respondent was employed, wrote to the OSS and enclosed a copy of the Portman Building Society account in connection with the estate of Mrs M B deceased. The letter indicated that the Portman Building Society had been opened in July 1996, the signatories to the account being a former partner in the firm, Mr R G, and the Respondent. It was confirmed that only one signature was required to withdraw funds. Consideration of the pass book showed that on the 19th September 2001 a cheque was withdrawn in the sum of £577.50 by the Respondent in favour of another client of the firm. The matter was discovered by the Respondent's former employers on 24th September 2001 and the partners immediately arranged for the payment of the sum of £577.50 from office account into the building society account to rectify the breach.
5. By letter dated 7th November 2001 the Respondent wrote to the OSS setting out his representations and explanation for that which had occurred. The Respondent confirmed that he had acted for a client, whom he did not identify, in connection with

the sale of a property. He asserted that during the course of replying to some preliminary enquiries in connection with the sale it transpired that there was a defect in the title in respect of which the buyer's solicitors required an indemnity policy. The Respondent obtained a quote in the sum of £577.50. The Respondent indicated that the clients in question had a related purchase where the deadline given for exchange of contracts had passed. He said that it was therefore agreed that to enable the sale and purchase to proceed, the premium for the indemnity insurance would be paid from the sale proceeds and he would then recover same from the solicitors who had acted for the client and her late husband when they had purchased the property. The sale and purchase completed on the 29th October 2001. The Respondent said that prior to and subsequent to completion he wrote to the solicitors involved when the property was first purchased but failed to pursue the matter following his last letter dated 14th December 2000. The Respondent said that the client called him on a number of occasions to ascertain when she would be repaid the premium and that he had assured her that all was in order and that he would recover the payment that she had made. The Respondent stated that 'I implied that they had agreed to make the payment and that all that it was just a matter of time before the payment would be made'. The client in question had been the Respondent's secretary previously and the Respondent said that he did not wish to let her down. When the client made an appointment to see him on Wednesday 19th September 2001, the Respondent stated that he felt he had to let her have a cheque when she came into the office to see him.

6. In relation to the Respondent's improper utilisation of clients' funds for the benefit of this client, the Respondent stated 'I made the decision to pay my client the sum of £577.50 from one of these accounts, so that she received her payment now, but it was my intention to re-pay the account before the end of this month from my own personal funds..... at the time of putting these arrangements in place I clearly did not think everything through and I never viewed the payment as stealing money from a client account. I honestly meant to pay back the money very soon and it is quite clear that I had no intention of benefiting from this on a personal level in any way. I have clearly been very naïve in trying to resolve a tricky problem, albeit one of my own making, by using the deposit account for a client in this manner, but I did not intend any dishonesty in any way'.
7. The Respondent went on to say in his letter of 7th November 2001 that 'This is the first, and the only time, that something like this has happened. I am now no longer a signatory on any accounts for clients of the firm'. Such representation to the OSS was not true for the reasons set out below.
8. By letter dated the 18th April 2002 Harold G Walker & Company wrote to the OSS indicating that the Respondent had been dismissed for gross misconduct on the 17th April 2002. The letter confirmed that whilst the Respondent was on holiday a pass book in the style of 'Mr T M , nominees Mr K Curran and Mr R G' with a balance of £5,271.42 had been located in the Respondent's desk. Mr G, being one of the purported signatories to the account, left that office in November 2000 and it therefore seemed strange to the firm that Mr. G should be a nominee to an account opened in September 2001. Further investigation, which included obtaining the account opening form from the Portman Building Society, raised further concern as the signature of Mr G did not accord with the records retained. The letter confirmed that the Respondent was challenged and, indeed, admitted that he had forged the

signature of Mr G and that Mr M was unaware of the existence of the money in the building society account. The investigation revealed that the surplus balance arose as a result of error during the course of a property transaction but rather than the surplus balance being returned to the client the Respondent opened the account, forging the signature of Mr G and paid in the sum of £5,271.42. Mr G had confirmed to the practice that he knew nothing of the transaction and that the signature was not his. No monies were withdrawn from the account and upon its discovery the account was closed and the money therein properly paid to Mr M.

9. By letter dated the 7th May 2002 Harold G Walker & Company wrote to the OSS enclosing an internal note setting out how the discrepancy in relation to the matter of Mr M arose and further enclosed a copy of the Portman Building Society account opening form showing the forged signature of Mr G.
10. By letter dated the 25th June 2002 the OSS wrote to the Respondent seeking his explanation. By letter dated the 12th July 2002 the Respondent replied. The Respondent said 'I confirm that the basic facts outlined in the letter from Harold G Walker & Company to you dated 18th April are correct'. The Respondent stated that he acted for a Mr and Mrs B in the purchase of a property in Poole some years earlier. Following completion, the Respondent was instructed to pursue the sellers for compensation relating to lost value of the property arising out of a material fact that it was said had not been disclosed to Mr and Mrs B. The Respondent accepted that as he was not a litigator he did not have the required experience and was out of his depth. He was under pressure from Mr and Mrs B for progress to be made and he informed them that proceedings were in progress and that he was trying to negotiate a settlement of the claim. He asserted that the claim had a value in the region of £4,000.
11. The Respondent confirmed that he acted for Mr and Mrs M in relation to certain property matters. He stated that the surplus sum referred to by Harold Walker & Company in their letter of the 18th April had been retained in the firm's client account as the result of an innocent discrepancy in the completion statement submitted to the client. The Respondent then opened a deposit account in the Portman Building Society in the name of Mr M. The Respondent says 'I have to admit I had considered the possibility of using some of this money to settle the claim of Mr and Mrs B, but I could not do this, knowing it was wrong. In fact, I took out a personal loan and settled Mr and Mrs B from my own money'. The Respondent confirmed that no monies were taken out of the Portman Building Society account. The Respondent also confirmed that whilst not proud of what he had done he accepted that his actions were in breach of the Solicitors Accounts Rules. The Respondent said that he was very sorry for what had happened and that he had apologised to his former employer.
12. The matter was considered by an Adjudicator who on the 7th October 2002 resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal. The Respondent was notified of the Adjudicator's decision by letter dated the 8th October 2002. The Respondent has not requested a review of the decision.

The Submissions of the Applicant

13. The Respondent had admitted the facts and allegations. The Respondent's Practising Certificate had expired in January 2003.
14. The Tribunal was referred to the Respondent's letter to the OSS dated 7th November 2001 in which he had written:

“The client had called me on a number of occasions to find out when she was being repaid the premium and I assured her that all was in order and that I would recover the payment that she had made. I implied that they had agreed to make the payment and that all that it was just a matter of time before the payment would be made.

The client had been my secretary in the past before leaving the firm and her husband had died tragically a couple of years ago and I did not want to let her down. I also knew that I had been slow in dealing with the repayment of the insurance premium.....

At the time of putting these arrangements in place I clearly did not think everything through and I never viewed the payment as stealing money from a client account. I honestly meant to pay back the money very soon and it is quite clear that I had no intention of benefiting from this on a personal level in any way.....

This is the first, and the only time, that something like this has happened. I am now no longer a signatory on any accounts for clients of the firm”.

15. The Respondent had admitted forging the signature of Mr G on the Portmand Building Society account. In the submission of the Applicant in forging the signature of Mr G, the Respondent acted in a way that was fraudulent, deceitful and contrary to his position as a solicitor. In view of the foregoing, the Respondent's explanation to the OSS in his letter of the 7th November 2001 seeking to explain the improper withdrawal of £577.50 was less than candid and was misleading. At the time of writing his letter to the OSS on 7th November 2001, the Respondent had improperly opened the building society account without the knowledge of his client Mr M, and forging Mr G's signature in the process. Having regard to that which was subsequently discovered regarding the opening of the account in the name of Mr M the Respondent's assertion that he was no longer a signatory on any clients' accounts was untrue and misleading.
16. The Respondent had accepted that his representation in the letter of 7th November 2001 was untrue. On any view the Respondent's conduct went to his integrity. In the submission of the Applicant the Respondent had been dishonest within the definition of dishonesty set out in the tests in the case of *Twinsectra v Yardley*.

The Submissions of the Respondent

17. The Respondent admitted all of the facts which were before the Tribunal. He was not proud of what had happened indeed he was very ashamed.

18. The Respondent had got into a mess dealing with the matter of the former secretary. He had not pressed the previous solicitors. The client had made an appointment to see him expecting payment and the Respondent had taken the money from the account of the estate of Mrs M B. The Respondent had intended to pay the money back before the end of the month.
19. The Respondent had been the signatory on a dozen such accounts and what he had done would have been noted by the cashier at the end of the month. The Respondent would have explained it away as a mistake.
20. In the event the partners had paid the money back, the Respondent had paid the partners at the end of the month and the money had in due course been recovered from the previous solicitors. The estate of Mrs M B had been wound up and finalised.
21. In the matter of Mr and Mrs M, Mr G had not left the practice but had retired as a partner and had become an assistant solicitor in another of the firm's offices.
22. The Respondent had acted for Mr and Mrs B in the purchase of the property. After completion the owners of the adjoining property had started an extension which affected the property of Mr and Mrs B and the Respondent had been instructed to pursue the sellers of the property for compensation.
23. The Respondent had tried to pass the matter on to someone else in the firm as he was not a litigator but no one had been interested. He had been out of his depth and had not been familiar with the processes particularly following the Woolf reforms. He had kept reassuring the clients and through pressure of work and stress had told them that agreement had been reached.
24. The Respondent had then found that there had been a mistake in a completion statement for Mr and Mrs M. It had been accepted by his former firm that this had been an innocent error. The surplus money had been in client account since November or December 1999 until the Respondent put it into a building society account. He had only become aware of the money shortly before. The Respondent had put the money into the account with the view to using it to settle the matter of Mr and Mrs B. He had intended to repay the money but had realised that he could not put £4,000 back into an account without being discovered.
25. On 9th October 2001 he had taken out a personal loan which was paid to him on 12th October and paid by him to Mr and Mrs B on 16th October.
26. The Portman Building Society account had been open for seven months before the firm had discovered it. No money had been taken out. The money was subsequently paid to Mr and Mrs M and the firm had paid compensation which the Respondent was repaying.
27. The Respondent was ashamed. He had misused his position as a solicitor but not for his own personal needs. He had misused his position when through pressure of work and stress he could not meet the needs of clients and the money had been used to meet demands of those clients. Neither the estate of Mrs M B nor Mr and Mrs M had lost out financially.

28. The Respondent had forged the signature of Mr G to get the money paid into the account. While he did not use the money he could not deny his dishonest intention.
29. In the first case he had known that he could pay the money back but in the second he had realised that he could not do this immediately hence his decision to take out a personal loan. The Respondent accepted that his motive in the first case had been to get him “out of a tight spot”.
30. There was a firm of solicitors who were prepared to employ the Respondent if he was not struck off by the Tribunal. The Respondent had agreed the Applicant’s costs but could only pay them by working.

The Findings of the Tribunal

31. The Tribunal found the allegations to have been substantiated, indeed the Respondent had admitted all the allegations including the allegation of dishonesty.
32. The Tribunal gave the Respondent credit for appearing before the Tribunal to express his shame and also for his frank admission of the most serious allegation that could be made against a solicitor. The Respondent had said that his misuse of clients’ funds had not been for his own personal gain. While it was accepted that the Respondent had derived no immediate financial gain from what he had done, his actions had been for his own benefit in terms of getting him out of difficult situations. In using clients’ funds for other clients he had jeopardised those funds. He had forged the signature of another solicitor and had misled the OSS. The public rightly expected the highest standards of stewardship in respect of clients’ money. By his own admission the Respondent had fallen very short of that standard. His conduct had been dishonest and it was right that the Tribunal should impose the ultimate sanction. The Tribunal ordered that the Respondent Keith Anthony Curran of Branksome, Poole, Dorset, solicitor be Struck Off the Roll of Solicitors and they further ordered him to pay the agreed costs of and incidental to the application and enquiry fixed in the sum of £3,000.

DATED this 5th day of August 2003
on behalf of the Tribunal

E Stanley
Chairman