

IN THE MATTER OF ANTHONY JAMES BRIAN LYONS, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R J C Potter (in the chair)  
Mr P Kempster  
Lady Maxwell-Hyslop

Date of Hearing: 9th December 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 Emma Grace solicitor and partner in the firm of Nelson & Co, St Andrews House, St Andrews Street, Leeds, LS3 1LF on 18<sup>th</sup> June 2003 that Anthony James Brian Lyons of Penbury Street, Worcester, Worcestershire, a former 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 unbecoming a solicitor in that he:-

1. Withdrew client money from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998;
2. Made transfers between various client accounts contrary to Rule 30 of the Solicitors Accounts Rules 1998;

3. Failed properly to record all transfers and withdrawals from client account contrary to Rule 32 of the Solicitors Accounts Rules 1998;
4. In all matters alleged against him acted in a way which compromised or impaired his independence and integrity, his duty to act in the best interests of clients, his good repute and that of the profession contrary to Rule 1 of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3<sup>rd</sup> January 2001 when Emma Grace appeared as the Applicant and the Respondent was represented by Mr Terry Johnson, a solicitor from Worcester.

The evidence before the Tribunal included the admissions of the Respondent, a letter in support of the Respondent and a curriculum vitae that was handed up.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Order that the Respondent, Anthony James Brian Lyons of Penbury Street, Worcester, Worcestershire, former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,857.73 (inclusive).

**The facts are set out in paragraphs 1 to 13 hereunder: -**

1. The Respondent, born in 1937, was admitted as a solicitor in 1965. He had voluntarily removed his name from the Roll of Solicitors.
2. At the material time the Respondent was a partner in the firm of Andrew Lyons & Co, 34a Foregate Street, Worcester, Worcestershire, WR1 1EE. The Respondent had since retired from practice. His address was 21 Penbury Street, Worcester.
3. An Investigation Accountant of the OSS attended at the premises of the Respondent's firm on 25<sup>th</sup> February 2002 to carry out an inspection of the firm's books of account. The Investigation Accountant's Report following the inspection was dated 29<sup>th</sup> May 2002 and was before the Tribunal.
4. The Report revealed a shortage of funds in client account and misuse of client funds by the Respondent. The Report also pointed out instances where the Respondent had supplied inadequate services to clients by attending late registrations of title following the completion of conveyancing transactions.
5. The shortage of funds in client account was the result of a general misuse of client funds by the Respondent from the period 6<sup>th</sup> June 2000 to 9<sup>th</sup> January 2002.
6. Mrs W was the Respondent's mother-in-law. She died on 14<sup>th</sup> January 1999. The firm acted for the Respondent in this matter. He was a co-executor and one of four beneficiaries (the other three being the Respondent's sons). Each beneficiary was entitled to £21,000 to £22,000 from the estate.

7. The Respondent used money from Mrs W's estate to cover shortfalls on other client accounts including an amount of £18,500 which was used to repay completion monies owing on the matter. The Respondent's intention had been to use his own share of the estate to make this payment, although this in fact took his share to £26,000. The Respondent did not notify his co-executor of money being used in this way. £17,000 was later repaid to the Mrs W account from the T account leaving £1,500 which the Respondent took as part of his entitlement to the estate.
8. A further sum of £20,256.47 was used in another conveyancing matter where a second mortgage had not been redeemed. This amount was still owing to the Mrs W estate at the time of the inspection.
9. A third amount, £1,720, was taken by the Respondent from the estate on 18<sup>th</sup> September 2001 relating to yet another conveyancing matter of which the Respondent had conduct. This money was repaid on 1<sup>st</sup> December 2001.
10. The result of the "borrowing" from the Mrs W estate was an overall shortfall of £15,302.96 owed to the beneficiaries of the estate.
11. The Respondent acted for Mr and Mrs B in their purchase of a property. They were obtaining a mortgage from Abbey National plc who had initially instructed another firm of solicitors. That firm had been unable to act as it was already acting for the vendors. Completion took place on 28<sup>th</sup> September 2001. The Respondent sent £65,000 to the vendors' solicitors. The £61,725 mortgage monies had not been received and there was not sufficient money in client account to meet such payment, resulting in a shortage of that sum on client account. The Respondent transferred £10,725 and £51,000 from different client accounts to cover this shortfall on the ledger. The shortage on client bank account of £61,725 had remained outstanding for a period of two and a half months. A shortage of £1,252.63 still existed at the date of inspection.
12. Mr T was a conveyancing client of the Respondent who sought to obtain a £75,000 mortgage advance from Nationwide Building Society. Completion took place on 6<sup>th</sup> June 2000. The Respondent remitted £83,185.56 to the vendors' solicitors. He had not received the mortgage advance monies by the date for completion. A shortage of £73,885.56 arose on client bank account. To cover this, the payment to the vendor's solicitors was posted to another client ledger. On 17<sup>th</sup> October 2000 the Respondent paid the client £18,500, the original amount paid by the client for the balance of his purchase. This amount was posted to the ledger of Mrs W. The mortgage advance monies were eventually received on 28<sup>th</sup> November 2000 and were utilised in the repayment of the shortage which had by then existed for nearly six months.
13. The Respondent had failed to register transfers with HM Land Registry within the specified time limits. The Investigation Accountant highlighted three particular matters where the registrations of clients' purchases were dealt with late:-
  - (i) the Respondent acted for Mr G in his purchase of a property as well as for the Royal Bank of Scotland, Mr G's mortgagees. Completion took place on 30<sup>th</sup>

October 1998. The Land Registry search priority period expired on 8<sup>th</sup> December 1998. The Respondent submitted the transfer for stamping on 1<sup>st</sup> March 2002;

- (ii) the Respondent acted for Mr S in his re-mortgage and also for Northern Rock Building Society, his mortgagee. The matter was completed on 18<sup>th</sup> June 1998. The application to register the new charge was submitted to HM Land Registry on 28<sup>th</sup> February 2002. Notices of Assignments of life policies were also submitted on that date;
- (iii) The Respondent acted for Mr K in a re-mortgage. He acted also for Britannia Building Society, Mr K's mortgagee. Completion took place on 29<sup>th</sup> April 1998. The application to register the new charge at the Land Registry was made on 1<sup>st</sup> March 2002.

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

- 14. The Applicant did not put the matter before the Tribunal as one involving dishonesty on the part of the Respondent.
- 15. In essence the Respondent had made a series of withdrawals from various client ledgers in order to satisfy liabilities arising on other unrelated client ledgers. He had "borrowed" money from ledgers where the money was not due to be called upon for some time in order to hide failures on other client matters where money was more pressingly needed. In the main this related to conveyancing matters where the Respondent's client's mortgagee was represented by another party. The Respondent had not remembered to obtain the mortgage advance monies in time for completion.
- 16. The Respondent either transferred money from unconnected ledgers to that where money was needed or had allocated the payments themselves to different ledgers upon which sufficient money was held. The Respondent hid those transfers either by entering the postings himself on the computer or by making incorrect statements on the posting forms passed to his firm's cashier.
- 17. The Law Society had written to the Respondent on 15<sup>th</sup> July 2002 with a copy of the Investigation Accountant's Report. The Respondent had replied on 1<sup>st</sup> August 2002 admitting the contents of the Investigation Accountant's Report and in particular admitting that he had misused clients' money and that he had been in breach of the Solicitors Accounts Rules 1998. He also admitted that he was responsible for late registrations at HM Land Registry following the completion of conveyancing matters.
- 18. The Respondent had suffered the stress of domestic conveyancing work and had not been able to confront problems as they arose.
- 19. The Respondent confirmed that he had not renewed his practising certificate and had no intention of practising as a solicitor again. The Respondent had also voluntarily removed his name from the Roll of Solicitors.

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

20. The Respondent was a decent hardworking solicitor who had suffered misfortune. His partner had died and his wife had also died shortly thereafter.
21. The Respondent expressed deep regret for his conduct. His partner had not been aware of what he had been doing.
22. The Respondent had felt less able to cope with the increasing stress involved in domestic conveyancing work. He tended to concentrate upon the work which was itself subject to the imposition of strict time-tables and had tended to put work to one side where the discipline of a timetable did not exist.
23. The Respondent had not felt able to confide in others when he was in difficulties.
24. The Respondent's over thirty five years career in the law had on the whole been worthy and honourable. The visit to the firm of the OSS's Investigation Accountant had accelerated the Respondent's planned retirement. He no longer held a practising certificate and had arranged for his name voluntarily to be removed from the Roll. At the time of the hearing the Respondent had gained employment in an area unrelated to the law.
25. The Tribunal was invited to give due weight to a written testimonial submitted in the Respondent's support.
26. The Respondent was said to have been sufficiently disorientated by his problems so that he was unable to confide in others or to seek legal assistance and representation until shortly before the hearing. A previous appearance of the Respondent before the Tribunal was made known after it had announced its finding that all of the allegations were substantiated. The Respondent confirmed to the Tribunal that he had complied with the decision of the OSS Adjudicator referred to therein and that he had not in fact been suspended from practice indefinitely.
27. The Respondent expressed his regret and shame and offered his apologies to all of those who had been caused difficulty as a result of his shortcomings. The Respondent assured the Tribunal that he would not seek to practise law in the future.
28. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.
29. On 13<sup>th</sup> December 2000 the Tribunal found the following allegations to have been substantiated against him namely that he had been guilty of conduct unbecoming a solicitor in that:-
  - (i) he had failed to discharge his duties to clients with due diligence and/or in their best interests.
  - (ii) he had failed to respond to correspondence from the Office for the Supervision of Solicitors.

- (iii) he had failed and/or delayed to comply with decisions and directions of adjudicators.
- (iv) he had failed to operate a complaints handling procedure, contrary to Rule 15 of the Solicitors Practice Rules 1990.

30. On that occasion the Tribunal said:-

"The members of the Tribunal were very concerned with the matters placed before them. They represented disgraceful failures on the part of Mr Lyons. If he was in any difficulty whatsoever either in completing the administration of the estate of Mrs T or in any other professional respect, they urged him to seek assistance either from his partner or from fellow solicitors. In order to mark the seriousness with which the Tribunal viewed Mr Lyons failings, they imposed upon him a fine of £4000. In addition they made an order that he would be suspended from practice for an indefinite period of time to commence on the 31<sup>st</sup> January 2001 unless by that date he had complied with the decision of the adjudicator of the Office and he had completed the administration of the estate of the late Mrs T. He was to confirm to the Tribunal by the 7<sup>th</sup> February 2001 that those conditions had been complied with. The Tribunal further ordered that the respondent should pay the costs of and incidental to the application and enquiry fixed in the sum of £5659.22.

For the avoidance of doubt, the Tribunal wished to make it very plain that the respondent must by the 7<sup>th</sup> February 2001 have filed with the Tribunal an affidavit confirming compliance with the Tribunal's requirements to which must be affixed as exhibits documentary evidence of due compliance."

- 31. In December of 2003 the Respondent was appearing before the Tribunal on a second occasion to answer very serious allegations indeed. Full compliance with the Solicitors Accounts Rules and the exercise of a proper stewardship over funds held by a solicitor on behalf of clients were fundamental principles to which solicitors in private practice must adhere. Any failure serves to put clients' funds at risk and serves seriously to damage the good reputation of the solicitors' profession. The Respondent's failure to deal properly with monies held by him and his failure properly to deal with post completion conveyancing matters could have caused considerable inconvenience to his clients.
- 32. The Tribunal gave the Respondent credit for his early and frank admissions. It took into account his unfortunate domestic background and the fact that the Applicant had not made any suggestion that the Respondent had behaved dishonestly. The Tribunal further accepted that the Respondent achieved no personal gain from his shortcomings and any deficiency on client account had been made good. The Tribunal noted that the Respondent had voluntarily removed his name from the Roll of Solicitors and had expressed his assurance that he would not wish or seek to practise law again.
- 33. In all of the circumstances the Tribunal considered it right that it should make an Order prohibiting the Respondent from having his name restored to the Roll of

Solicitors except by Order of this Tribunal. It was further right that the Respondent should pay the Applicant's costs in the agreed fixed sum.

DATED this 16<sup>th</sup> day of February 2004

on behalf of the Tribunal

R J C Potter  
Chairman