

IN THE MATTER OF JULIAN AIDEN VICKERS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mr S N Jones  
Mrs S Gordon

Date of Hearing: 10th May 2005

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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 Law Society by Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors, Bradley Court, Park Place, Cardiff, CF10 3DP on 9th November 2004 that Julian Aiden Vickers of 16 Lowestoft Street, Stansted, Essex, CM24 8LP, 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 that he had been guilty of conduct unbecoming a solicitor in that:-

- 1) He withdrew monies from client account contrary to Rule 15(1) of the Solicitors Accounts Rules 1998;
- 2) He withdrew monies from client account when insufficient monies were held leading to a cash shortage, contrary to Rule 22(5) of the Solicitors Accounts Rules 1998;

- 3) Following the withdrawal of monies from client account leading to a cash shortage, he has failed to remedy promptly the consequent breaches of Rules 15 and 22, contrary to Rule 7 of the Solicitors Accounts Rules 1998;
- 4) He accepted a loan of £10,000 from a client by withdrawing that sum from client account contrary to Rule 22(1)(e) of the Solicitors Accounts Rules 1998 and without ensuring that the client had been provided with independent legal advice;
- 5) He failed to deliver an Accountant's Report contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Michael Robin Havard 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 made the following Order:-

The Tribunal orders that the respondent, Julian Aiden Vickers of Vickers Solicitors, 16 Lower Street, Stanstead, Essex, CM24 8LP, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of July 2005 unless the Respondent do by 30<sup>th</sup> June 2005 file with the Law Society Accountant's Reports for the periods ending 30<sup>th</sup> April 2004, 31<sup>st</sup> October 2004 and 30<sup>th</sup> April 2005. If the filing of these Accountant's Reports is so achieved then the sanction imposed on the Respondent will be a fine of £3,000.00.

The Tribunal further orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,236.92.

**The facts are set out in paragraphs 1 to 6 hereunder:-**

1. The Respondent, born in 1966, was admitted as a solicitor in 1992. At the material times the Respondent practised on his own account as Vickers Solicitors at 16 Lower Street, Stansted, Essex CM24 8LP.
2. An Officer of the Forensic Investigations Department of the Law Society (the FIO) carried out an inspection of the Respondent's firm which commenced on 13th November 2003. His report dated 9th December 2003 was before the Tribunal. The FIO reported upon the following areas of concern:-
  - 1) At the inspection date, 12th November 2003, liabilities to clients both shown and not shown by the books totalled £12,175.50: cash available was £9,785.97, leaving a cash shortage of £2,389.53. A proportion of the cash shortage was replaced during the inspection but there remained a cash shortfall of £1,594.90.

- 2) On 13th December 2001 £1,594.90 had been transferred from client to office bank account in respect of counsel's fees and a defendant's legal costs. Both items remained unpaid.
  - 3) Overpayments totalling £654.63.
3. The Respondent had taken a loan from Mrs M, a client.
  4. The loan was made by way of transfer from client to office bank account on 14th October 2002, when insufficient monies were held. The Respondent obtained a business loan of £10,000 which was credited to his office bank account on 31st October 2002. The debit balance on Mrs M's client account and the resultant shortage were not completely rectified until 9th March 2003.
  5. The FIO reported that the Mrs M loan was unsecured, there was no formal documentation for the loan, independent advice was neither recommended to nor taken by Mrs M and no interest has been paid by the Respondent to his client, Mrs M.
  6. The Respondent's Accountant's Report for the six month period ending 30th April 2004, which should have been delivered to the Law Society on or before 30th June 2004 remained outstanding. The Law Society wrote to the Respondent on 10th September 2004 requesting an explanation, but no response had been received from the Respondent.

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

7. The Respondent admitted the allegations which fell into three categories, namely the cash shortages established by the FIO, the loan of £10,000 made by Mrs M to the Respondent when Mrs M was a client and the failure of the Respondent to lodge the Accountant's Report.
8. The Respondent was required to lodge Accountant's Reports on a six-monthly basis by a condition placed on his Practising Certificate. Although not forming part of the allegations the Respondent's Accountant's Report for the six months period ending on 31st October 2004 was also outstanding.
9. The Applicant confirmed that he did not put any of the allegations against the Respondent as matters involving dishonesty.

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

10. The Respondent confirmed that he admitted the allegations and regretted his breaches. The cash shortages had arisen as a result of honest error and had been put right. All of the shortages were clearly disclosed on the face of the accounts.
11. With regard to the loan taken by the Respondent from Mrs M, he confirmed that she had "happened" to be a client because she sold and bought property in respect of which the Respondent had undertaken conveyancing. At the time of the loan Mrs M was working in the Respondent's practice. Mrs M had been a friend for some 30

years and her loan of the money to the Respondent had been made in that capacity rather than as a client. Nevertheless the Respondent accepted that the taking of the loan had placed him in breach of the practice rules relating to conflict of interest between a solicitor and his client. The loan had been repaid and the shortfall caused on Mrs M's client account when the loan monies were transferred had been corrected.

12. The Respondent was a sole practitioner primarily undertaking conveyancing work. There had been a downturn in that work and there had not been any upturn in the spring of 2005 which had been the usual pattern. The Respondent was subject to cashflow difficulties and it had been shortage of money which had prevented the Respondent from filing his Accountant's Report on time.
13. The Respondent assured the Tribunal that he would by the end of June 2005 file the outstanding Accountant's Reports for the end of April and the end of October 2004 and also the Accountant's Report for the period ending 30th April 2005. He anticipated that at the end of June the position with regard to his Accountant's Reports would be brought completely up to date. The Respondent's problem had been that he had not been able to pay his accountants. He confirmed that the outstanding Reports and that for the period to the end of April 2005 would be filed and he said that he was sure that they would be unqualified.
14. The Respondent was the only solicitor in his practice, which he ran with two assistants who were not legally qualified.

### **The Tribunal's Findings**

15. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
16. Following a hearing on 27th January 2004 the following allegations were found to have been substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that he had:-
  - (i) failed to lodge a proposal form to effect indemnity insurance cover before the commencement of an indemnity period contrary to Rule 8 of the Solicitors Indemnity Insurance Rules 2001;
  - (ii) failed to pay indemnity insurance premiums within 30 days of issue of a debit note, contrary to Rule 16 of the Solicitors Indemnity Insurance Rules 2001;
  - (iii) practised as a solicitor whilst in breach of Rules 8 and 16 of the Solicitors Indemnity Insurance Rules 2001 contrary to Section 37 of the Solicitors Act 1974.
17. In its Findings dated 18th March 2004 the Tribunal said:-
 

“The Tribunal found the allegations to have been substantiated and indeed they were not contested. The Respondent had admitted his failures and had put the matter right. He had learnt an expensive lesson. Failure to effect appropriate insurance was a serious matter but the Tribunal had noted the comments of the Applicant in that

regard. The Respondent had not repeated the offence since and the Tribunal considered that the appropriate penalty was a fine.

The Tribunal ordered that the Respondent, Julian Aiden Vickers of 16 Lower Street, Stansted, Essex, CM24 8LP, solicitor, do pay a fine of £1,000, such penalty to be forfeit to Her Majesty the Queen, and they further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £773”.

### **The Tribunal’s Decision and its Reasons**

18. The Tribunal was concerned on 10th May 2005 to find that the Respondent was appearing before it on a second occasion to answer allegations which related to failures to comply with important regulatory requirements.
19. Those regulatory requirements are in place to ensure that the Law Society is able to fulfil its regulatory functions, which in turn ensures that members of the public are not put in jeopardy, and breaches are to be regarded as serious. The Tribunal also considers to be most serious the allegations made against the Respondent in respect of the loan which he took from a client.
20. It is absolutely clear that it is because of the fiduciary relationship which exists between the solicitor and client that a solicitor must not take advantage of the client nor act where there is an actual or potential conflict of interest between the client and the solicitor. There is a conflict of interest where a solicitor in his personal capacity borrows from his own client. The solicitor should in such cases ensure that the client takes independent legal advice. If the client refuses to do so the solicitor must not proceed with the transaction. The fact that the client accepts the conflict does not permit a solicitor to continue to act (Commentary 1 to Principle 15.04). In the Respondent’s case where he himself confirms that he has been short of money there is a clear potential conflict of interest in that the Respondent might not have been able to repay to Mrs M the £10,000 that he borrowed from her. He did not ensure that she took independent advice and in the absence of her being in receipt of such advice he should not have accepted the loan.
21. The seriousness of this conduct was compounded by the fact that when the transfer of £10,000 loan monies from the Mrs M client account on 28th August 2002 was made insufficient monies were held thus creating a deficit on Mrs M’s client account, and further deficits were created on that account and not completely cleared until 9th March 2003.
22. Although allegation 5) related only to the Respondent’s failure to file an Accountant’s Report for the accounting period ending April 2004, the Tribunal has decided that it will accept the Respondent’s assurance that he will file on or before 30th June 2005 not only that Accountant’s Report but also that falling due at the end of October 2004 and that falling due at the end of April 2005. In the light of such assurance the Tribunal made its Order that provided these three Accountant’s Reports are filed on or before 5 pm on 30th June 2005 the sanction to be imposed upon the Respondent will be that of a fine of £3,000. If the these three Accountant’s Reports are not so filed then the Respondent will be suspended from practice indefinitely. Failure to file such reports, taken together with the Respondent’s other conduct found as alleged, and his

previous appearance before this Tribunal give rise to concern as to whether members of the public are in jeopardy from the Respondent continuing in practice. Any application by the Respondent for this period of suspension to be brought to an end will be likely to require to be accompanied by appropriate reassurance that no such jeopardy exists and that all outstanding Accountant's Reports have been satisfactory and duly filed.

23. The Tribunal will be satisfied that the Respondent's outstanding Accountant's Reports have been duly filed by the above mentioned time and date by the filing with the Tribunal's Clerk of an affidavit confirming the date upon which the Reports have been filed with the Law Society to which copies of the relevant Accountant's Reports have been exhibited.

Dated this 10th day of May 2005

On behalf of the Tribunal

A G Ground  
Chairman