

IN THE MATTER OF PETER MERRELL KILTY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mrs K Todner
Mr G Fisher

Date of Hearing: 4th October 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Hilary Susan Morris, a solicitor employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE, on 19th November 2004 that Peter Merrell Kilty of Carisbrooke Road, Leicester, Leicestershire (now c/o Montague Road, Leicester), 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in the following particulars, namely:-

- (i) He failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998.
- (ii) He withdrew money from client account in breach of Rules 19(2) and 22 of the Solicitors Accounts Rules 1998.
- (iii) He deliberately and improperly utilised clients' monies for his own purposes.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th October 2005 when Hilary Susan Morris appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the Respondent's admission of the facts but his denial of dishonesty. The Tribunal heard oral evidence from Mr Robert Sage, a Senior Investigation Officer with The Law Society.

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

The Tribunal ORDERS that the Respondent, PETER MERRELL KILTY c/o Montague Road, Leicester, (formerly of Carisbrooke Road, Leicester, Leicestershire) solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,112.04

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

1. The Respondent, born in 1946, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Kilty's Solicitors at 93 London Road, Leicester LE2 0PF.
3. The Law Society Adjudication Panel decided to intervene in the Respondent's practice and to refer the conduct of the Respondent to the Tribunal in a decision made on 26th March 2004. The intervention took place on 29th March 2004.
4. Upon due notice to the Respondent, an Investigation Officer of The Law Society commenced an inspection of the Respondent's books of account on 22nd March 2004 and produced a report dated 30th April 2004.
5. During the inspection concerns arose as to the conduct of eight particular files and bills rendered by the Respondent on those files.
6. A comparison of the total liabilities with cash held in the client account showed a cash shortage of £124,478.11 as at 25th February 2004. This had subsequently been amended by a reduction of £859.06. The Respondent accepted the cash shortage was in excess of £100,000 and said that he was unable to replace this. The cause of the shortage was due to improper transfers from client to office account made at the Respondent's instigation during the period 13th February 2002 to 13th February 2004 for which bills had not been delivered to the client.
7. The Report set out details of three of the eight matters by way of example.

P Deceased

8. The Respondent acted for Mr P, the husband and personal representative of P Deceased, in connection with the winding up of her estate. The Respondent drew a bill for £9,400 and transferred that sum from client to office account on 12th

December 2003. The firm's client care letter to Mr P on 12th September 2003 had estimated the firm's costs as '£500 + VAT (MAXIMUM)'. The Respondent agreed with the Investigation Officer that the transfer of costs to office account of the sum of £9,400 on 12th December 2003 was in respect of a bill that had not been delivered to his client and accordingly a cash shortage of £9,400 existed on the bank account at that date in respect of that matter. The Respondent further agreed that the bill totalling £9,400 could not be justified and the transfer was therefore improper.

W Deceased

9. The Respondent acted for executors of the estate of Mr W. Bills were drawn dated 23rd January 2004 and 13th February 2004. The relevant client's ledger showed transfers of costs of £11,750 and £11,802 from client to office account on 23rd January 2004 and on 13th February 2004. The Respondent admitted to the Investigation Officer that the bills had not been delivered to his clients and he agreed that the bills of costs could not be justified. He estimated that the time spent on this file was two and a half hours. He said that he was not able to replace the cash shortage immediately.

In the matter of K

10. The Respondent acted for Mr K in connection with a proposed purchase of a property which did not proceed. On 16th August 2003 he wrote a letter to the client to confirm that the matter had not proceeded and submitted a bill in the sum of £352.30 including VAT relating to the aborted purchase.
11. The Investigation Officer noted from the file that no further work had been carried out and the only subsequent document on the file was a copy of an interim bill of costs dated 17th October 2003 for the sum of £4,700 including VAT. The bill purported to be for work carried out in relation to a garage business. A sum representing this amount was transferred from client to office account on 17th October 2003.
12. On 23rd March 2004 the Respondent, in answer to questions by the Investigation Officer, stated that this bill had been delivered to the client but he accepted that the bill was excessive and said he had already agreed to repay the money to his client. He said he was unable to do so until he had remortgaged his property.
13. During the interview with the Investigation Officer on 25th April 2004, the Respondent admitted that in many instances bills had not been delivered to the clients concerned and that the bills could not be justified. He accepted that he had made improper transfers of funds from client account to office account and these were made in desperation due to cashflow problems of his business. The Respondent said that his current liabilities totalled approximately £250,000.

The Submissions of the Applicant

14. The Applicant referred the Tribunal to the Respondent's statement in his letter of 30th September 2005 to the Tribunal that the Applicant "is not herself alleging personal dishonesty on my part". The Applicant submitted that she had always made clear to the Respondent that she was alleging dishonesty against him and that she would

allege that on the basis of the facts and what those facts inferred. The Applicant referred the Tribunal to her letter of 3rd October 2005 in which she had again stated to the Respondent that dishonesty was alleged in the Rule 4 statement and that this had been her position throughout. The Applicant had served the appropriate Civil Evidence Act Notice on the Respondent and submitted that his letter of 30th September appeared to admit the facts but denied dishonesty.

15. In the submission of the Applicant, however, there had been a deliberate misappropriation of client monies. Solicitors were entrusted with clients' money and the Respondent had abused that client trust. It was a matter for the Tribunal to decide whether the Respondent had been dishonest or reckless but in the submission of the Applicant the Respondent had been guilty of conscious impropriety within the tests set out in the case of Twinsectra v Yardley and upheld in Bultitude and Ritson. These were not isolated incidents but had occurred over a period of two years.
16. Despite the Respondent's assertion in his letter of 30th September 2005 that he had made no personal gain, his conduct in relation to client funds had been of benefit to his practice.
17. Claims in excess of £96,700 had been made on the Compensation Fund in respect of the Respondent's practice and further claims were pending.

Oral evidence of Robert Sage

18. Mr Sage, a Senior Investigation Officer with The Law Society, who had attended the Respondent's offices on 22nd March 2004 confirmed that the contents of his Report dated 30th April 2004 were a true and accurate account of the issues raised.
19. Mr Sage confirmed that the Respondent had agreed with Mr Sage that the bill in respect of the estate of Mrs P Deceased could not be justified and that the transfer was improper (paragraph 15 of the Report) although the wording was that of Mr Sage.
20. In relation to the matter of Mr K there had been nothing on the file to show any work had been carried out after the first bill nor indeed any justification for the subsequent bill.
21. In relation to the matter of the estate of Mr W Deceased the Respondent had estimated that he had carried out two and a half hours of work but had billed some £20,000. Mr Sage's notes stated that the file was very thin, containing some twenty sheets of paper. The deceased had died in June 2003. Money had come into the estate in December 2003 and the Respondent had billed the estate in January and February 2004 despite there being nothing on the file to denote work.
22. During the inspection Mr Sage had observed no evidence of an excessive lifestyle on the part of the Respondent. The money appeared to have been used to fund the practice.
23. The other five matters referred to in the Report were similar to the three he had exemplified.

24. The Respondent had been quite disturbed during the inspection. The inspectors had arrived on the Monday and remained for a week but had only been able to see the Respondent on the Friday. He was clearly upset and said that he had attempted suicide earlier in the week.
25. Mr Sage said that in his opinion the Respondent had known what he was doing.

The Submissions of the Respondent

26. The submissions of the Respondent were contained in his letter to the Tribunal dated 30th September 2005.
27. He apologised for his non-attendance at the hearing due to a lack of financial resources and poor health.
28. He asked that the Tribunal note that the Applicant had not questioned his health problems and was not herself alleging personal dishonesty on his part. He said he had been thoroughly investigated by the police who had found no dishonesty and no charges were preferred.
29. The Respondent considered that he had received no real support or assistance from The Law Society and said his life had disintegrated since the intervention both professionally and personally. He referred to his mental health problems and impending bankruptcy.
30. He apologised for distress caused to clients. He said that he could not pay for medical reports but had discussed matters with his medical practitioners and said it appeared that he had been chronically, physically and mentally unwell for some four to five years. He submitted that his behaviour had been out of character as a result of his medical problems.
31. He said that any statement given to the interveners had been given after a serious suicide attempt and he felt it had in effect been dictated by them.
32. He said he had made no personal gain and had lost literally everything. He could not pay a fine or costs which would simply be added to the bankruptcy. He asked not to be struck off the Roll of solicitors but to be suspended from practice for a year and thereafter only to practise following medical certification as to his fitness and then only in an employed capacity.
33. The Respondent was now receiving medical and psychiatric treatment and hoped his health would improve when he would hope to work in the law again.
34. He asked the Tribunal to note that there was no lack of cooperation on his part with the interveners.
35. The Respondent said that he was sure he could put forward testimonials but felt that there was no point. He apologised for practising when he was clearly unfit.

The Findings of the Tribunal

36. The Respondent had not challenged the facts which had been presented to the Tribunal by the Applicant and the issue for consideration by the Tribunal in relation to the allegations was therefore whether or not the Respondent had been dishonest. The Respondent denied dishonesty.
37. The Tribunal considered firstly the Respondent's statement in his letter of 30th September 2005 that his behaviour had been out of character as a result of his medical problems. The Tribunal had before it a report from the Respondent's general practitioner dated 7th July 2005 regarding the Respondent's state of health and in particular the mental ill-health from which he had suffered following the intervention. The Tribunal accepted that the Respondent had been unwell since the intervention and indeed the matter had previously been adjourned on the grounds of his mental ill-health. In his letter of 30th September 2005 the Respondent had not sought a further adjournment. He had at no stage in the proceedings supplied medical evidence which addressed his responsibility for his actions at the time of the events in question or his ability to know right from wrong. There was a reference in the report from the general practitioner to some depressive episodes in late 2003. The Respondent's misconduct however covered a period from early 2002 to early 2004. Only the clearest medical evidence could lead the Tribunal to take a view that the Respondent had not been responsible for his actions and no such evidence was before the Tribunal. The Respondent's misconduct was so serious that even had the improper transfers occurred as a result of recklessness a Tribunal would be likely to impose the most severe penalty. In the present case, however, the Tribunal was satisfied applying the tests in Twinsectra v Yardley that the Respondent's conduct had been dishonest. He had admitted to the Investigation Officer that the bills he had issued could not be justified. In the case of Mr W Deceased the Respondent had transferred costs of over £22,000 but admitted that the time spent on the file was two and a half hours. He had admitted to the Investigation Officer that the transfers had been made in desperation due to cashflow problems. Mr Sage in evidence had said that the Respondent was upset when he spoke to him but there was no medical evidence which would lead the Tribunal to discount the Respondent's statements to Mr Sage. The Respondent had made transfers of client funds which he knew he could not justify for his own benefit to fund his practice at a time of financial difficulty. This was misconduct which severely damaged the reputation of the profession in the eyes of the public. The Tribunal noted also the significant claims on the Compensation Fund, a cost which would have to be borne by other members of the profession. In the interests of the protection of the public it was right that the Respondent's name be struck off the Roll of Solicitors. The Tribunal noted that the Respondent said he would be unable to pay costs due to an impending bankruptcy but considered it right that an order be made that he pay the Applicant's costs.
38. The Tribunal made the following order:-

The Tribunal ordered that the Respondent, PETER MERRELL KILTY c/o Montague Road, Leicester, (formerly of Carisbrooke Road, Leicester, Leicestershire) solicitor,

be STRUCK OFF the Roll of Solicitors and it further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,112.04

Dated this 18th day of November 2005
On behalf of the Tribunal

R B Bamford
Chairman