

IN THE MATTER OF ANDREW THOMAS EASTHAM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J N Barnecutt (in the chair)  
Mr K W Duncan  
Mr S Marquez

Date of Hearing: 5th January 2010

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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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London WC1R 4BX on 13<sup>th</sup> March 2007 that Andrew Thomas Eastham, 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 each of the following particulars:-

- (a) That he established Eastham Legal Consultancy Services which was not properly registered with the Law Society.
- (b) That Eastham Legal Consultancy Services had no professional indemnity insurance.
- (c) That the books of accounts of Eastham Legal Consultancy Services were not kept in accordance with the Solicitors Accounts Rules.
- (d) That he permitted a client account to become overdrawn.

- (e) That he paid his own monies into a client account.
- (f) That he permitted client account to be used in circumstances where there was no underlying transaction.
- (g) That he acted and/or continued to act in circumstances where there was a conflict or a significant risk of conflict between his own interest and those of clients.
- (h) [Duplicate allegation deleted with the consent of the Tribunal].
- (i) That he failed to conduct any or any adequate enquiries as to the source of funds received into his client account.
- (j) That he provided misleading information to clients.
- (k) That funds were withdrawn from client account improperly and/or contrary to the Solicitors Accounts Rules.
- (l) That he improperly withdrew funds from client account for his own purposes.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 5<sup>th</sup> January 2010 when Peter Harland Cadman appeared as the Applicant and the Respondent was represented by Mr Timothy Dutton of Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent to allegations (b), (c), (d), (e), (i) and (l).

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

The Tribunal Orders that the Respondent, Andrew Thomas Eastham, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 5th day of January 2010.

Having found all the allegations which were pursued to have been substantiated the Tribunal Orders that the balance of the allegations contained within the Rule 4 Statement are hereby stayed and are not to be proceeded with without permission of the Tribunal.

The Tribunal Orders that the Respondent do pay the costs of and incidental to the application and enquiry such costs to be subject to a detailed assessment unless agreed between the parties.

**Background facts**

1. The Respondent, born in 1955, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. The Respondent practised in partnership under the style of Easthams of Blackpool. In May 2005 the Respondent additionally set up a separate practice of Eastham Legal Consultancy Services ("ELCS"). On 12<sup>th</sup> July 2006 the Law Society intervened in the practice of ELCS.

3. While a partner of Easthams Solicitors the Respondent was retained by GB. By an order dated 15<sup>th</sup> April 2005 the Police Service of Northern Ireland (“PSNI”) obtained a production order under the Proceeds of Crime Act. This order related to files and records of Eastham Solicitors concerning the work undertaken by the firm for GB.
4. At that stage the two other partners of the firm decided that the firm would no longer be retained by GB.
5. The Respondent, however, continued to act for GB and companies controlled by him. The Respondent set up a separate firm, ELCS, in May 2005 to deal with the property schemes and investment programmes of GB and his limited company.
6. The Law Society conducted an inspection of the firms Easthams and ELCS commencing on 13<sup>th</sup> September 2005. On arrival the Law Society representatives were informed that the Respondent was in Belgium and a meeting was arranged to take place on 7<sup>th</sup> November 2005. On that date during the course of the meeting the Respondent received a phone call and notified the Law Society representative that his wife was ill in hospital. The meeting was resumed on 14<sup>th</sup> February 2006 initially at the offices of Eastham and subsequently at the Respondent’s home address. That inspection resulted in a report dated 19<sup>th</sup> April 2006 which noted various matters including the matters set out below.
  - ELCS had no professional indemnity insurance.
  - The client bank account of ELCS was overdrawn.
  - No books of accounts were maintained for ELCS in breach of the Solicitors Accounts Rules.
  - The Respondent improperly paid his own monies into the client account in breach of the Solicitors Accounts Rules.
7. The Respondent was directly involved in GB’s limited companies as director secretary and/or shareholder of the companies.
8. The Respondent failed to take any or any adequate steps to check the provenance of funds received from two particular “investors”.
9. The investigating officers conducted an analysis of the ELCS client bank account which showed payments to the Respondent, to GB and to a company owned by GB and to the Respondent’s wife.

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

10. The Solicitors Regulation Authority (“SRA”) had come to a view, having seen the psychiatric evidence, that the proposal put forward on behalf of the Respondent, subject to the Tribunal’s approval, was an appropriate way to proceed. The proposal was that the Respondent would make admissions to allegations (b), (c), (d), (e), (i) and (l). Allegations (a), (f), (g), (j) and (k) would be stayed not to be proceeded with without the consent of the Tribunal. Allegation (h) was a duplication of allegation (g) and would be deleted with the Tribunal’s consent.

11. The SRA took account particularly of the fact that the Respondent's health records were contemporaneous with the events which were the subject of the Rule 4 Statement and weight had also been given to the continuing psychiatric evidence.
12. The Respondent's health issues were longstanding and it was possible that there would not be a speedy recovery. On that basis the SRA agreed to the proposal that the unadmitted allegations be stayed. If however there was a quick or "Ernest Saunders" recovery of the Respondent's health it might be that any application by the Respondent for an end to the indefinite suspension which the Tribunal was invited to impose would also give rise to an application by the SRA for the stayed matters to be reconsidered. The stayed matters included serious allegations.
13. The Applicant confirmed his agreement to the draft Order submitted by Mr Dutton on behalf of the Respondent.

### **The Submissions on behalf of the Respondent**

14. Mr Dutton said that the Tribunal had before it an agreed statement of facts on the basis of Mr Dutton's skeleton argument. On the Respondent's behalf Mr Dutton accepted that an Order for indefinite suspension would be appropriate.
15. The Tribunal had two functions to fulfil namely the upholding of the reputation of the profession and the protection of the public. Given the psychiatric evidence, the Respondent would not be able to practise and that would be the situation for some time.
16. The Tribunal was referred to the cases of Carecraft 1994 1WLR172 and Secretary of State for DTI v Rogers 1996 2BCLC513. The case of Carecraft showed the basis on which the parties had been dealing with each other in the present matter namely agreeing a solution in respect of which the Tribunal then made an Order. In the case of Carecraft it was accepted that the court had jurisdiction very similar to that which the Tribunal was being asked to adopt.
17. The Court of Appeal case of Rogers (a company directors disqualification case) qualified the case of Carecraft in the sense that the Court's function was to say yes or no to the proposal. If it said no then the whole case would have to proceed.
18. Where there was a statement of facts, such as the one in this case which was contained in the skeleton argument, and a resolution, it would help any future Tribunal looking at the question of re-admission.
19. Mr Dutton submitted a draft consent Order to the Tribunal. The reason for the request that costs be assessed if not agreed was the bankruptcy of the Respondent.
20. The Respondent had admitted breaches of rules and misconduct. Throughout the whole history there had been serious psychological problems for the Respondent which had in fact become worse even after the intervention. The admitted misconduct might be sufficient for the imposition of a fixed period of suspension but the fact of the psychiatric history and the need for the protection of the public and of the reputation of the profession rendered it appropriate, both parties submitted, for there

to be an indefinite period of suspension so that the Respondent could make a psychiatric recovery in the fullness of time. The Tribunal would then hear an application for restoration and that was a protective mechanism for the public which the Respondent fully accepted.

21. The report of Dr G said it would take time for the Respondent to be restored to robust health. A quick recovery was not expected. Over the previous two years, dealing with this matter alone had been traumatic for the Respondent. The history from 2000 and in particular from 2004 demonstrated severe psychological trauma.

Allegation (b)

22. The Tribunal was referred to Mr Dutton's skeleton argument in relation to the admitted allegation (b). The matters set out there were not disputed and are set out below:-

“As to the circumstances of this the Tribunal will be provided with the reasons as to how this occurred at the Hearing. In short, the Respondent was given an indicative indication of a premium in the region of £5,000 which he could not afford. Fees due to be paid by GB were not paid. Further, the breach must be seen in the context of [ELCS] being established by the Respondent as a consultancy which was not intended and did not in the main undertake reserved work.”

Allegation (c)

23. This matter was also set out in the skeleton argument as follows:-

“The circumstances were that the Respondent intended to refer the books of account to BM Howard Accountants. Although [ELCS] was not registered, the period with which we are concerned is between May 2005 and its cessation in January 2006. The Respondent thought that he could deal with matters properly in accordance with the Accounts Rules before the year end. He was wrong about this. He was kept so busy by GB and by other personal matters that he did not find that he had time to attend to clerical and regulatory matters. It was a case of deferring these until he would have had time to deal with them. In the event he did not. GB failed to meet his promises and commitment, the result of which was that [ELCS] ceased. The Respondent was under considerable pressures at this time. After January 2006 Eastham Solicitors was trying to save itself from financial collapse and the Respondent was engaged in constant meetings with solvency practitioners (Bebbies Traynor in Manchester) and with his accountants. At this time his personal emotional condition was at a low ebb and he was seeking psychotherapy help from LA on the recommendations of Dr N (see LA's reports of 2007 and 2009). He had become ill and had lost the ability to deal with matters proactively or timeously. He put problems to one [sic] and failed to deal with them until the last minute.”

Allegation (d)

24. It was stated in the skeleton argument:-

“The circumstances were that the client account of [ELCS] was overdrawn in the sum of £14,086.12. This was as a result of HSBC applying commercial charges on disbursements personally incurred on the instructions of or for the benefit of GB. In addition HSBC applied their own charges in handling a dishonoured Euro draft for €3million to client account and not office account. This error was rectified. The Respondent attended [ELCS’s] HSBC branch (in St Anne’s on Sea) and pointed out to them that they had debited the wrong account. He had both an office account and a client account in the name of [ELCS] and HSBC transferred the overdrawn balance to office account leaving the client account with a nil balance.”

Allegation (e)

25. The skeleton argument stated:-

“Monies were paid into client account to enable a repayment to be made on one of DGR (a GB associated company) portfolio investors – SD and also by the Respondent recrediting monies that GB had allowed him to deduct towards his fees. GB authorised the Respondent to transfer £25,000 by way of fees and then told him that £10,000 had to be paid to one of his contractors working for Great Western Holdings Ltd, and he asked the Respondent to refund the £10,000 from the fees and pay it to this person. The Respondent did this.”

Allegation (i)

26. Mr Dutton stated in his skeleton argument:-

“The Respondent admits that he did not seek the provenance of funds in respect of each transaction where monies were received into his client account.

The circumstances were that all monies credited to the client account were from banks via bank-to-bank transfer. He did not receive cash receipts. All receipts were in relation to agreements entered into by his clients, being DRG or GB separately with third parties. The Respondent advised in respect of the requirement that DRG and GB should undertake due diligence in respect of incoming payments. The Respondent, however, relied on DGR or GB to satisfy themselves as to the identity of their customers. The Respondent took the view that a payment coming from a bank would not be tainted by any money laundering issues. The Respondent now accepts that his understanding of the requirements as such was incorrect and that he should have made appropriate enquiries.”

Allegation (l)

27. In the skeleton argument it was stated:-
- “The Respondent admits that fees properly due to [ELCS] under the agreement with GB were withdrawn and used to repay disbursements incurred for GB or on his instructions, and that this was a breach of the Rules. However, the Respondent did not intend improperly to withdraw funds for his own purposes. Nevertheless, the fact that funds were taken to repay disbursements (although restored to the client account) gave rise to a breach of the Rules which the Respondent admits.”
28. Serious allegations had been made against the Respondent which were to be stayed. There would be no finding of dishonesty against the Respondent in this Tribunal. Had the stayed matters been contested there would have been a very serious contest on both dishonesty and the stayed allegations.
29. The psychiatric evidence showed the sad history of a man who had succeeded in practice but for whom things had gone wrong after the breakdown of his marriage. The Tribunal was referred to the current diagnosis by the Respondent’s consultant psychiatrist, Dr G, which set out a vivid account of the state in which the Respondent now found himself. The Respondent had had a three month admission to hospital in 2008 and had had psychotherapeutic and drug treatment.
30. In March 2009 there had been a further serious psychiatric episode. The Respondent was now in a very depleted state compared with a decade ago.
31. The Respondent was very sorry for the breaches he had committed. He had put very high esteem on his professional life and on the quality of his work. In serious circumstances which became tragic he lost the high standards to which he had aspired.
32. In the fullness of time it was hoped that the Respondent would recover from the strain and start, as he intended to do, to work in the community and keep up his interest in law. Perhaps in a period of time he might be able to provide services to the legal profession.
33. The Tribunal was requested to Order that the stayed allegations are not to be proceeded with without the consent of the Tribunal. This was in the public interest. No one was expecting the Respondent to make a speedy recovery.

**The Findings of the Tribunal**

34. The Respondent had admitted allegations (b), (c), (d), (e), (i) and (l) and the Tribunal found those allegations to be substantiated. The Tribunal noted the agreed facts set out in the skeleton argument, the background to these matters, the extensive psychiatric evidence and the proposal put forward by both parties. In all the circumstances the Tribunal considered that it was appropriate to make the Order requested namely the imposition of an indefinite suspension and the making of a costs Order to be subject to detailed assessment unless agreed in the light of the Respondent’s bankruptcy.

35. The Tribunal noted the very serious allegations which had not been considered today and ordered that these be stayed not to be proceeded with without the consent of the Tribunal. The Tribunal noted that the stayed allegations were serious and noted the SRA's intention to consider its position should there be an unexpectedly early recovery by the Respondent. The Tribunal expressed the hope that the determination of the matters considered today would relieve some of the burden on the Respondent's health.
36. The Tribunal Ordered that the Respondent, Andrew Thomas Eastham, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 5th day of January 2010.
37. Having found all the allegations which were pursued to have been substantiated the Tribunal Ordered that the balance of the allegations contained within the Rule 4 Statement are hereby stayed and are not to be proceeded with without permission of the Tribunal.
38. The Tribunal Ordered that the Respondent do pay the costs of and incidental to the application and enquiry such costs to be subject to a detailed assessment unless agreed between the parties.

Dated this 26<sup>th</sup> day of March 2010  
On behalf of the Tribunal

J N Barnecutt  
Chairman