

IN THE MATTER OF ANDREW JOHN TILSITER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R J C Potter (in the chair)  
Mr A Gaynor-Smith  
Mrs N Chavda

Date of Hearing: 17th July 2008

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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 Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 7 Fishergate Court, Fishergate, Preston, Lancashire PR1 8QF on 10<sup>th</sup> January 2008 that Andrew John Tilsiter of c/o Mr P H Cadman, Russell Cooke, 8 Bedford Row, London WC1R 4BX, 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 consciously misappropriated client funds for the benefit of himself and/or third parties. For the avoidance of doubt, this allegation was an allegation of dishonesty.
2. He took advantage of clients and/or a third party.

3. That contrary to Rule 1 of the Solicitors Practice Rules 1990, his conduct compromised or impaired or was likely to compromise or impair his independence or integrity as a solicitor, his duty to act in the best interests of a client or clients, his good repute or that of the solicitors' profession.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17<sup>th</sup> July 2008 when Stuart Roger Turner appeared as the Applicant and the Respondent appeared and was represented by Peter Cadman, solicitor in the firm of Russell Cooke, 8 Bedford Row, London WC1R 4BX.

The evidence before the Tribunal included admissions to all the allegations save the allegation of dishonesty.

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

The Tribunal Orders that the Respondent, Andrew John Tilsiter of c/o Mr P H Cadman, Russell Cooke, 8 Bedford Row, London, WC1R 4BX, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 17<sup>th</sup> day of July 2008 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,171.92.

**The facts are set out in paragraphs 1 - 21 hereunder:-**

1. The Respondent, born in 1971, was admitted to the Roll of Solicitors in 1995. At all material times, the Respondent carried on practise in partnership at Harold Benjamin solicitors of Hill House, 67-71 Lowlands Road, Harrow, Middlesex, HA1 3EQ.

Complaint by Mr E

2. The Respondent represented Mr E who was involved in a road traffic accident on 9<sup>th</sup> December 2001 in pursuing an action for damages against the driver of the vehicle that struck him. Instructions had been accepted by the Respondent on a conditional fee basis and a letter was sent to the client on 1<sup>st</sup> February 2002 indicating the success fee was limited to a maximum of 25% of any damages which would be deducted from his damages.
3. In July 2004 Mr E was awarded damages of £111,948.00. Shortly thereafter the Respondent wrote to Mr E confirming that some deductions would be made and a deduction of a 25% success fee (£26,828.00) would be deducted from the damages.
4. Mr E received part payment of his damages on 18<sup>th</sup> August 2004 and was contacted by the Respondent who requested payment of the success fee of £26,828.00. By a compliment slip dated 26<sup>th</sup> August 2004, the Respondent asked Mr E to make the success fee cheque payable to Abbey plc and gave the account number. Previously the Respondent had asked Mr E to make the payment of the success fee to the Respondent's son.
5. Mr E sent the Respondent a cheque payable to Abbey plc and this cleared his bank account on 7<sup>th</sup> September 2004.

6. Subsequently Mr E saw a Court Order stating the defendant was responsible for paying the costs and he wrote to the Respondent seeking an explanation as to why 25% had been deducted from his damages for what appeared to be his own costs. After a series of correspondence, Mr E submitted a resolution form to the Respondent's firm on 8<sup>th</sup> January 2005. When further enquiries were made by the Solicitors Regulation Authority, the Respondent did not deny receiving the sum of £26,820.00 but claimed it had been a gift, and further that he had been stupid and had exercised poor judgment and had repaid the money to Mr E.
7. When the file was reviewed by Solicitors Regulation Authority there was a conditional fee agreement dated 1<sup>st</sup> February 2002 on the file between Mr E and the Respondent's firm which provided for a success fee of 100% of the basic charges. It appeared to have been signed by the Respondent and Mr E although the original agreement was not on file. Following settlement of Mr E's damages, the Respondent had entered into negotiations with the defendant's solicitors regarding costs and had agreed a figure of £68,000.00 which included the 100% success fee set out in the conditional fee agreement.
8. Mr E had no recollection of either seeing or signing the conditional fee agreement.
9. It appeared from the file that the account to which the Respondent requested Mr E to make payment was the mortgage account in the name of the Respondent and his wife.

#### Complaint by Mr R

10. Mr R was involved in an accident at work on 21<sup>st</sup> January 2003. He instructed the Respondent to deal with the matter and a copy of the client care letter signed by Mr R was on the file dated 9<sup>th</sup> July 2003. The letter referred to the matter being conducted on a conditional fee agreement but did not refer to a success fee. The file contained a copy of a conditional fee agreement dated 22<sup>nd</sup> May 2003 signed by the Respondent but not signed by Mr R which provided for a success fee of 75%.
11. In January 2005 Mr R's claim settled for £135,000.00. The Respondent wrote to Mr R on 11<sup>th</sup> January 2005 informing him of this and referred to deducting his firm's 20% success fee. Mr R signed and returned a copy of this letter on 15<sup>th</sup> January signifying his agreement to the arrangement.
12. On 24<sup>th</sup> February 2005, the Respondent wrote to Mr R stating:-
 

"I am pleased to enclose our client account cheques in the sum of £125,000.00 being the balance of agreed damages in this matter. I have split the payment into two cheques as you requested"
13. The client ledger relating to Mr R records a payment of £25,000.00 on 23<sup>rd</sup> February 2005 with the narrative "settlement monies - Abbey ..." and a further payment from client account of £100,000.00 on 24<sup>th</sup> February 2005 with the narrative "settlement Mr E R".
14. The Abbey account referred to in the ledger's narrative was the Respondent's mortgage account.

15. The Respondent entered into negotiations with the defendant's solicitors to determine costs and a global sum of £21,500.00 for costs was eventually agreed and paid.
16. In November 2005, when the Law Society commenced an inspection of the books of account and other documents of Harold Benjamin solicitors, the firm was informed of the apparent payments from client account to the Respondent's mortgage account and on 2<sup>nd</sup> December 2005, the firm suspended the Respondent. At that time the Respondent tendered his resignation which was accepted.
17. When subsequent enquiries were made with Mr R, he confirmed he had not requested his damages to be paid in two cheques and he had not received the letter of 24<sup>th</sup> February 2005 enclosing two cheques.
18. Eventually the Respondent appointed solicitors to act on his behalf and they wrote to the Solicitors Regulation Authority on 19<sup>th</sup> July 2007 indicating that the sum taken from Mr E's damages was said by the Respondent to be a gift from Mr E and the sum taken from Mr R's damages was said to arise from a "side agreement" to pay the Respondent directly 20% from any damages recovered.

Further matters

19. On 11<sup>th</sup> July 2007, Harold Benjamin solicitors wrote to the Solicitors Regulation Authority to report the Respondent's conduct in connection with the handling of a sale of property under the terms of a Court Order for one of the Respondent's former matrimonial clients. The Respondent had acted for a wife in connection with a divorce and ancillary proceedings. The husband had been unrepresented and took little part in the proceedings. This resulted in the Court making Orders for the sale of a property to enable the wife, the Respondent's client, to take the benefit of a lump sum and a Costs Order was made against the husband.
20. The Respondent had conduct of the sale and an Order was obtained which provided amongst other things that:-

"the net proceeds of sale are to discharge all prior encumbrances, outgoings and estate agents commission and the solicitors reasonable costs of the sale together with a lump sum to be paid into Court subject to further Order".

This Order was made on 25<sup>th</sup> September 2001.

21. After the property was sold the net proceeds of sale amounted to £90,677.93 and should have been paid into Court as soon as they were received on 10<sup>th</sup> April 2002. There was a letter on the file dated 4<sup>th</sup> April 2002 purporting to pay the money into Court but the ledger account showed that payment had been made to a Nationwide Building Society account, and investigations revealed that this account was in the Respondent's name. Since then the monies had been recovered from the Respondent together with lost interest.

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

22. The Respondent had admitted the allegations save for the allegation of dishonesty. The Applicant submitted that in this case there had been dishonesty not just misappropriation and it was clear that the clients had been taken advantage of. With regard to the last conveyancing matter, it had subsequently transpired that the husband was represented by the Court of Protection so he was a particularly vulnerable client who had played little or no part in the proceedings.
23. The Applicant confirmed that although all sums had now been recovered, the total amount of misappropriation had been £142,505.93. The Applicant also confirmed that he did not know whether the Respondent's behaviour had come before any other authority.

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

24. Firstly, the Respondent confirmed that the police had not taken any action against him. The Respondent also asked the Tribunal to disregard the reference to the Court of Protection that had been made in relation to the husband in the conveyancing matter as, at the material time in 2002, there was no reason to believe the husband was incapable of dealing with his own affairs.
25. The Respondent referred the Tribunal to the number of testimonials which had been produced on his behalf which were from various parties including previous clients, other solicitors, a Deputy District Judge and the Respondent's current employers, the Ackerman Group.
26. The Respondent also referred the Tribunal to a medical report from a Consultant Psychiatrist, Dr Hart, dated 29<sup>th</sup> May 2007 and 9<sup>th</sup> April 2008. The Respondent indicated that he had first received psychiatric treatment in November 1999 for work related stress but he did not contact his Psychiatrist again until January 2006, when these matters were referred.
27. The Respondent indicated that when he had thought back about things, he realised that there were a number of matters which had affected him in the past. When he had first attended his Psychiatrist, one of his clients had committed suicide which had made him feel very distressed about his work. In 2003, one of the partners in the firm, who was a close friend of the Respondent, was killed in a road traffic accident together with his daughter and his wife (who was also a secretary at the same firm) was very badly injured. The Respondent had taken it upon himself to help his friend's widow with her subsequent claim which added further pressure on to him.
28. The Respondent stressed that when the monies had been held in April 2002 in the conveyancing matter, he had not used the money at all, it had just been held and was returned with lost interest to the firm. Regarding the matters of Mr E and Mr R, the Respondent had been under a great deal of pressure and his behaviour had been very odd and eccentric at that time. As soon as the matters were presented to the Respondent, he resigned immediately and full recompense was made without delay. The Respondent had not worked as a lawyer since his resignation and was now working in the area of property.

29. The Respondent had approached his Psychiatrist again in January 2006 after having thoughts about suicide. He was placed on anti-depressant treatment and indicated he would continue counselling. The Respondent's father had also suffered from depression for many years and the Respondent admitted that this had also distressed him at times during the period of his own depression.
30. When the Respondent attended for an interview for his current job, he was totally open with his current employers about his background and the Tribunal were referred to the testimonial from the Respondent's current employers dated 18<sup>th</sup> June 2008 when it was confirmed that he was "open and up front about the difficulties" and the "problems he was facing with the Law Society". The Respondent confirmed that these problems had been completely out of character for him and this was reinforced by the reference provided from a Deputy District Judge who had previously employed the Respondent as a trainee solicitor. The Respondent admitted the allegations but not the allegation of dishonesty. From the medical evidence, the Respondent submitted it could be seen that he had a fragile personality. He had the burden of dealing with the aftermath of a car crash, work problems, emotional implications and whilst the Respondent appreciated that the Tribunal would normally strike off a solicitor in such a case, the Respondent asked the Tribunal to consider an indefinite suspension in his case. He reminded the Tribunal that he was a young man and that a suspension would not bar him from returning to the profession providing he could produce evidence to show that his fragile state of mind had subsided.
31. With regard to the issue of costs, a costs schedule had been provided by the Applicant confirming the Applicant was seeking his costs in the sum of £18,171.92. The Respondent confirmed that whilst these costs were not argued on the basis of quantum, he did wish to make some points about merit. The Respondent indicated that if the Tribunal decided to terminate his right to practice, then the Tribunal must consider his means as he would be unable to earn an income as a lawyer. The Respondent confirmed that he had decided not to continue practising and that this was a rational and sensible approach given his circumstances. He was currently earning £2,092.00 net per month and from this he had net expenses of £2,785.00 plus a family loan to his father.

### **The Findings of the Tribunal**

32. The Tribunal found all the allegations to be substantiated and, indeed, noted the Respondent had admitted all the allegations save the allegation of dishonesty.
33. Concerning the allegation of dishonesty, the Tribunal noted that although the Respondent had been suffering mental health issues and stress at work, his acts had been deliberate in that he had forged letters to clients, he had paid money into his own mortgage account and this had been done on three separate occasions. It was accepted that the Respondent had not used the money but the Tribunal concluded these were deliberate acts of dishonesty involving a total of £142,506.17 which was not an insubstantial amount. Indeed the Respondent accepted he had misappropriated this amount, although he did return all the money.

34. The Tribunal had considered carefully the test of dishonesty set out in the case of *Twinsectra Ltd v Yardley and others* (2002) UKHL 12, namely whether an ordinary member of the profession would take the view that the Respondent's conduct was dishonest, and further, whether the Respondent would take the view or not care that fellow solicitors would regard his conduct as dishonest.
35. Having considered all the documents and submissions made by the parties, the Tribunal was satisfied that the Respondent's behaviour and conduct in relation to misappropriation of client funds was conduct that an ordinary member of the profession would regard as dishonest. Furthermore, the Tribunal was satisfied that by creating false letters the Respondent must have been aware that fellow solicitors would regard his conduct as dishonest.
36. The Tribunal had considered the medical evidence and the Respondent's medical condition and felt that in these particular circumstances, striking off the Respondent would exacerbate his medical condition. The Tribunal considered this to be a wholly exceptional case. The Tribunal stressed that in most similar circumstances, the appropriate sanction would be a strike off but in this particular case, the matters had taken place some time ago, the Respondent had admitted the allegations and was no longer practising as a solicitor. It was clear he was suffering from psychological symptoms and the Tribunal was impressed by the various references which had been produced. All the monies had been repaid by the Respondent at the first opportunity and he had admitted the allegations and co-operated with the enquiry from the outset. In all the circumstances, the Tribunal were persuaded to order an indefinite suspension.
37. The Tribunal had also considered the question of costs very carefully and had taken into account the Respondent's financial circumstances. However, the Tribunal felt that in this particular case costs should be paid in full by the Respondent.
38. The Tribunal Ordered that the Respondent, Andrew John Tilsiter of c/o Mr P H Cadman, Russell Cooke, 8 Bedford Row, London, WC1R 4BX, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 17th day of July 2008 and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,171.92.

Dated this 17<sup>th</sup> day of October 2008

On behalf of the Tribunal

R J C Potter  
Chairman