

IN THE MATTER OF ERIC IAN HOLLAND, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr P Kempster (in the chair)  
Mr D Glass  
Mrs S Gordon

Date of Hearing: 6th November 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 Jayne Willetts, Solicitor Advocate & Partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP on 18<sup>th</sup> April 2008 that Eric Ian Holland, a solicitor, of Egerton, Bolton, Lancashire, may be required to answer the allegations contained in the statement that accompanied the application and that such Order be made as the Tribunal shall think right.

The allegations against the Respondent were:-

1. He failed to keep accounting records properly written up for Ian Holland & Co to show dealings with client money in breach of Rule 32 (1) of the Solicitors Accounts Rules 1998 (“SAR 1998”).
2. He failed to conduct reconciliations of client money in breach of Rule 32(7) of the SAR 1998.

3. He withdrew money from client account between 2<sup>nd</sup> October 2006 and 9<sup>th</sup> February 2007 other than as permitted by Rule 22(1) of the SAR 1998.
4. He failed to remedy the breaches contained in allegations 1 to 3 above promptly on discovery in breach of Rule 7(1) of the SAR 1998.
5. He failed to produce records for inspection when required to do so by the Investigation Officer in breach of Rule 34 of the SAR 1998.
6. He continued to withdraw money from client account between 2<sup>nd</sup> March 2007 and 12<sup>th</sup> November 2007 other than as permitted by Rule 22 (1) of the SAR 1998 notwithstanding a direction to the contrary by the Investigation Officer in February 2007.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 6<sup>th</sup> November 2008 when Jayne Willetts appeared as the Applicant and the Respondent did not appear but was represented by Gareth Edwards, solicitor of Crangle Edwards Solicitors, 15 Edge Lane, Stretford, Manchester M32 8HN.

The evidence before the Tribunal included the admissions of the Respondent and a number of testimonials in relation to the Respondent's character.

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

The Tribunal Orders that the Respondent, Eric Ian Holland of Egerton, Bolton, Lancashire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 6th day of November 2008 and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

**The facts are set out in paragraphs 1 - 9 hereunder:-**

1. The Respondent, born in 1952, was admitted as a solicitor on 15<sup>th</sup> December 1976. He did not currently hold a practising certificate. At all material times the Respondent carried on practice on his own account at Ian Holland & Company Solicitors, 13-15 Railway Road, Darwen, Lancashire BB3 2RG.
2. On 15<sup>th</sup> February 2007 an Investigation Officer ("the IO") commenced an inspection at the Respondent's practice and, as a result, prepared a Forensic Investigation Report dated 27<sup>th</sup> March 2007. In that Report the IO identified that:-
  - (a) There were no proper books of account.
  - (b) There were no entries in the books of account since September 2006.
  - (c) Client account reconciliations had not been carried out since September 2006.
  - (d) The Respondent could not provide evidence of client account reconciliations carried out since the practice was established in 1989.

- (e) The Respondent could not produce any client and office bank account statements prior to October 2006.
  - (f) There was no reliable list of client liabilities as at any date since the practice commenced in 1989.
  - (g) There were numerous unallocated round sum transfers from client to office account.
3. The Respondent explained to the IO that the books were not up to date as his cashier had been away from the office since October 2006 due to illness. In view of the deficiencies in the client account records, it was not possible for the IO to calculate the practice's total liabilities due to clients as at the inspection date. However, it was possible to ascertain a minimum cash shortage of £110,230.00 being the total of the improper transfers from client to office account. By a payment on 8<sup>th</sup> March 2007 the Respondent replaced the minimum cash shortage in client account of £110,230.00.
  4. The IO confirmed there were 55 round sum transfers from client to office account between 2<sup>nd</sup> October 2006 and 9<sup>th</sup> February 2007. A list of these transfers was prepared by the IO and exhibited to his Report.
  5. The Respondent explained to the IO that the transfers represented costs due to his firm and on 9<sup>th</sup> March 2007 the Respondent provided a list giving a calculation of bills issued between 2<sup>nd</sup> October 2006 and 9<sup>th</sup> February 2007 totalling £113, 270.60. The Respondent also said the transfers were instigated by his bank when his overdraft facility was nearing its limit.
  6. The Respondent had been aware of the difficulties at the latest by 1<sup>st</sup> November 2006 as, on that date, his Reporting Accountant submitted his report to the Law Society for the period 1<sup>st</sup> May 2005 to 30<sup>th</sup> April 2006. The Reporting Accountant stated that he was unable to compare the client liabilities to cash held in client account due to lack of records and lack of reconciliations. The Reporting Accountant also identified that monies had been drawn from client account before bills of costs were raised.
  7. By a letter dated 13<sup>th</sup> April 2007, the Respondent was sent the IO's Report and an explanation was requested. The Respondent replied by a letter dated 25<sup>th</sup> May 2007 indicating his bookkeeper had been ill and that had caused difficulties with the accounts. He had employed a large firm of local accountants to deal with the accounts. The Respondent stated no client had lost out as a result of the backlog in bookkeeping and that he and the other fee earners had kept a written record of all transactions which would be inputted into the computer when the bookkeeper returned to work.
  8. On 12<sup>th</sup> December 2007 an intervention into the Respondent's practice commenced. The intervention agent identified whilst undertaking an investigation of the financial records for the practice that there were 93 lump sum transfers from client to office account totalling £174,012.00 between 2<sup>nd</sup> March 2007 and 12<sup>th</sup> November 2007. A schedule of these payments together with corresponding bank statements for both client and office accounts was produced before the Tribunal. The transfers, on the

face of the statements, did not appear to relate to client matters. The intervention agent was unable to locate any financial records that related to the lump sum transfers.

9. The later lump sum transfers (March 2007 – November 2007) followed exactly the same pattern as the earlier lump sum transfers (October 2006 – February 2007) identified by the IO. The Respondent had been advised by the IO during the inspection in February 2007 of Rule 22 of the SAR 1998 and that the earlier lump sum transfers were improper. The Respondent was also aware from the Investigation Report sent to him dated 13<sup>th</sup> April 2007 of the position in relation to lump sum transfers. Notwithstanding such directions the Respondent continued to transfer monies from client to office account in breach of Rule 22.

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

10. The Respondent admitted all allegations and the Applicant confirmed there was no allegation of dishonesty. In February 2007 the Respondent had been asked by the IO to produce evidence of the lump sum transfer bills but he had been unable to produce this evidence immediately, although he had produced it in March 2007.
11. The Applicant referred the Tribunal to the bank statements of the Respondent's practice which showed that the office account had had a regular overdraft of about £45,000.00 throughout 2007. It appeared that the lump sum transfers were made from client account to office account when the overdraft was approaching its limit of £45,000.00.
12. The Applicant submitted that the Respondent had a very busy practice with a considerable number of client matters being dealt with. The correct accounting procedures had not been followed and the present position regarding the intervention was that a shortfall of £216,000.00 had been identified due to a failure to post bills against these transfers. Had proper reconciliations been carried out, the shortfalls could have been identified and dealt with properly.
13. The Applicant also submitted a claim for costs in the sum of £12,691.78. These costs included the costs of the Forensic Investigation Unit.

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

14. Whilst the Respondent had not appeared in person today, he confirmed through his representative that all allegations were admitted and indeed, had been admitted at the first opportunity after the Respondent had taken legal advice. The Respondent stressed that he did not intend any discourtesy to the Tribunal in failing to appear before the Court but due to his ill health, his wife had indicated the experience may be too much for him to cope with. Had the Respondent felt better and had he been able to afford it, he would have indeed attended the Tribunal.
15. The Respondent's representative had been instructed on 27<sup>th</sup> October 2008 and had prepared the case as best he could within the short time since his instructions were received. He submitted the most serious allegation was allegation 6, the withdrawal of money from client account between 2<sup>nd</sup> March 2007 and 12<sup>th</sup> November 2007 other

than as permitted by Rule 22 (1) of the SAR 1998 notwithstanding a direction to the contrary by the IO in February 2007.

16. The Respondent submitted that when the IO discovered various deficiencies in the client account, the Respondent had produced a bundle of slips totalling £145,000.00 in order to rectify the position. He accepted there had been breaches of the SAR 1998 and whilst he had tried to instruct a firm of accountants to do the bookkeeping, he had been unable to pay the accountants due to financial difficulties. They had therefore stopped working. After this point the Respondent had buried his head in the sand and continued practising as he had done before.
17. The Respondent confirmed that the record of the second set of bills from 2<sup>nd</sup> March 2007 to 12<sup>th</sup> November 2007 had not yet been found. The Respondent's colleague, Miss T, who had assisted the Respondent in the practice had confirmed the bills did exist and records of the bills also existed in a notebook but so far they had been unable to find this. Miss T was now assisting the Intervention Agent to try to locate these bills and identify the lump sum transfers between March 2007 to November 2007.
18. The initial visit by the IO was triggered by a qualified Accountant's Report being filed. The Respondent's representative had spoken with the Respondent's accountant on the telephone and the accountant had confirmed that in his view the Respondent was not dishonest in any way but just a little muddled.
19. The Respondent accepted that a perusal of his office account bank statements showed that as his overdraft approached £45,000.00, transfers were made from client account into office account. The Respondent stressed that the bank had done this itself and had not been authorised to take this action by the Respondent. This may have been due to an inexperienced bank manager who thought that the transfers were acceptable but the Respondent submitted that a significant number of transfers had been unauthorised in this manner. Indeed, the Intervention Agent had asked the Respondent's representative to send him details of the bank's unauthorised transfers so that further investigations could be made with the bank to try to sort out the position. The Respondent submitted the bank took this action automatically and he did not get in touch with the bank at any time authorising the transfers to take place. His cashier, Miss W had always dealt with the bank in the past but she had now left the practice.
20. The Respondent submitted that his position indicated a man floundering in practice, trying to service the needs of clients and desperately trying to keep the practice running. The Respondent was involved predominantly in crime and family work which involved a lot of court attendances. He had legal executives who were carrying out the conveyancing and probate work and as soon as he lost a key member of staff, he had entered a downward spiral.
21. The Respondent referred the Tribunal to various entries in his office and client bank account statements which indicated that not all of the transfers had been round figures and indeed, a number of transfers had been specific figures. The Respondent submitted that the overall total of the round sum transfers given by the Applicant had been overstated as not all of the transfers had been round sum transfers. In any event,

the round sum transfers had been carried out by the bank of their own volition and without any authority from the Respondent.

22. Having said that, the Respondent maintained that the sums transferred by the bank roughly equated to the bills that he had done.
23. The Respondent submitted that the key issues in this case was the competency of the Respondent to practise and his health. If the Respondent had had sufficient financial resources, he would have produced a medical report before the Tribunal and he would have also requested an accountant to attend the hearing in order to clear up outstanding matters. However, the Respondent was not well and could not afford to pay for such evidence.
24. The Respondent produced a bundle of testimonials from various solicitors and other professionals in support of his character and reputation as a solicitor. The Respondent submitted he was out of his depth in practice. He was a good staff officer but not a good commander. He had always had a good reputation, working with young people in the youth court and nobody had ever questioned his integrity or his honesty.
25. The effect of these proceedings hearing had been quite substantial on the Respondent and it had also affected his family. His daughter had been unable to continue her studies at university and his son had been unable to go to university due to his father's financial situation. The Respondent appeared to have had a breakdown and had found it very difficult to give instructions. He never lived a millionaire lifestyle and indeed, his drawings were approximately £1,250.00 per month. His family home would have to be sold and the Respondent had lost everything.
26. Presently the Respondent was working in Runcorn as a full time night carer at a youth hostel. His wife was working part time as a secretary in a school and his three children aged between 16 and 22 years old were all living at home.
27. The Respondent was keen to try to keep his options open. He realised that he could not currently practise as a solicitor and may not be able to do so again. However, he requested the Tribunal not to impose the ultimate sanction upon him. He currently was not working as a solicitor. He was not anxious to get back into practice but he would like the option to do so if the time came.
28. On 11<sup>th</sup> February 2008, a condition had been placed on the Respondent's practising certificate that he may work only in approved employment and he could not practise as a partner or sole principal. This condition was imposed on the Respondent's practising certificate after the intervention had taken place. Accordingly, although the authorities were aware of the intervention and investigation, they still considered it was appropriate at that time for the Respondent to be able to continue practising as a solicitor albeit only in approved employment.
29. The Respondent submitted that the testimonials made it clear he had a lot of respect within the profession and within the community. He was a good crime and family lawyer and, in these areas of law, his dealings with financial issues were fairly minimal. He submitted that he would probably thrive if all he had to do was the actual work but not the administration of the practice.

30. The Respondent submitted that the appropriate sanction would be to suspend him indefinitely from practice. He did not want to return to practice immediately but would like to be able to do so in the future having provided any necessary medical evidence and a reference from a potential employer.
31. The Respondent referred the Tribunal to three previous cases that had been before the Tribunal. These were the cases of Peter James Sleep (9597/2006), Paul Nicholas Smith (9652/2007) and David Dorian Lewis (9708/2007). All of these cases had striking similarities to the Respondent's current circumstances and the Tribunal was referred to these when considering the issue of sanctions. The Respondent admitted he had appeared before the Tribunal on one previous occasion in January 1999; however, that was a completely unrelated matter where he had given a professional undertaking that he had been unable to honour. On that occasion he had been reprimanded and an order for costs had been made.
32. In relation to the position on costs, the Respondent's representative was unable to comment on costs but simply wished to advise the Tribunal that the Respondent was now in an Individual Voluntary Arrangement and if costs were ordered, details would be passed to the Individual Voluntary Arrangement supervisor.

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

33. The Tribunal found the allegations to have been substantiated, indeed they were admitted.
34. The Tribunal acknowledged the difficulty the Respondent had had in running a practice and whilst the testimonials produced evidenced that he was a very competent solicitor, it appeared he was incompetent in managing the running of a solicitor's practice.
35. The Tribunal noted there had been no dishonesty. Rather, there had been a complete breakdown of practice management.
36. The Tribunal thanked the Respondent's representative for the coherent manner in which the Respondent's case had been presented, particularly in light of the late instructions that had been given.
37. While the Tribunal had some sympathy for the position in which the Respondent had found himself, the Tribunal had a duty to protect the public and the reputation of the solicitors' profession.
38. The Tribunal was mindful that if proper reconciliations had been carried out, and the Solicitors Accounts Rules complied with, the Respondent would not have found himself in the position that he was in. These rules were in place to protect the public and to allow the profession's authority to carry out its very important regulatory function.
39. The Tribunal also noted the previous appearance by the Respondent but accepted that this related to a completely different matter.

40. Taking all the circumstances into account, the Tribunal felt that the appropriate and proportionate sanction was an indefinite suspension.
41. The Tribunal Ordered that the Respondent, Eric Ian Holland of Egerton, Bolton, Lancashire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 6th day of November 2008 and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 6th day of March 2009

On behalf of the Tribunal

P Kempster  
Chairman