

IN THE MATTER OF WILLIAM ERIC CAPPER, a Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr Cook (in the Chair)
Mr Fordham
Mr Lukies

FINDINGS AND ORDER

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors' Act 1974

An application dated 23rd August 1982 was duly made on behalf of The Law Society by William Montague Cheale of No. 24 Grafton Road, Worthing, West Sussex, solicitor, that William Eric Capper then confined in HM Prison, 68 Hornby Road, Walton, Liverpool solicitor might be required to answer the allegations contained in the Affidavit which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations made were that the respondent had

- (1) failed to comply with the Solicitors' Accounts Rules 1975 in that he
 - (a) notwithstanding the provisions of Rule 7 of the said Rules failed to keep properly written up books and accounts and documents of account as are required by such Rule

- (b) notwithstanding the provisions of Rule 8 of the said Rules drew out of a client account money other than permitted by Rule 7 of the said Rules
- (ii) been guilty of conduct unbecoming a solicitor in that he
- (a) utilised money held and received by him on behalf of a certain client or certain clients for his own purposes
 - (b) utilised money held and received by him on behalf of a certain client or certain clients for the purposes of a person other than such client or clients
 - (c) furnished to The Law Society an explanation of the conduct of himself and of his partner which he knew or ought to have known was untrue
 - (d) has been convicted and sentenced for certain criminal offences.

The Tribunal heard the application at the Court Room No. 60 Carey Street London WC2 on 10th November 1982 when the said William Montague Cheale a partner in the firm of Davies Thomas & Cheale of No.24 Grafton Road, Worthing, West Sussex solicitors appeared for the applicant. The respondent did not appear and was not represented.

The evidence before the Tribunal consisted of the oral evidence of Frank Illingworth as to due service upon the respondent, of the oral evidence of Arthur Patrick Ryan, a witness called on behalf of the applicant, and of the exhibits WEC1 to WEC3 inclusive.

The facts set out in paragraphs 1 to 16 inclusive hereunder were proved.

1. The respondent was admitted a solicitor in 1947 and at the material times carried on practice as a solicitor in partnership with Robert James Tunstead under the firm name of Bartley Cocks & Bird ("the firm") at No.17 Sweetings Street, Liverpool, conducting a general practice with the assistance of a staff of six. He retired from the firm on 18th January 1982.

2. On 9th February 1981 Mr Gallacher, an assistant to Mr Harold Greenhalgh FCA, The Law Society Investigation Accountant, attended at the firm's offices to carry out an inspection of their books of account pursuant to notice duly given under the Solicitors' Accounts Rules and the Solicitors' Trust Accounts Rules.
3. In connection with the practice the firm banked with National Westminster Bank Ltd., No.22 Castle Street, Liverpool, either partner alone having authority to operate the bank accounts. On 31st January 1981 there was a credit balance on the client account of £1,870.52, credit balances totalling £12,664.84 on ten clients designated deposit accounts, and a debit balance on the office account of £9,896.94.
4. A list of the firm's liabilities to clients as at 31st January 1981 was produced to Mr Gallacher. The items were in agreement with the balances in the clients' ledger and totalled £19,309.18. A comparison of this figure with the cash available and held on client bank accounts at that date after allowance for uncleared items showed that the cash available totalled £14,430.41, whereby a cash shortage was revealed of £4,878.77. This cash shortage had arisen because of over-payments varying in amount between £1.48 and £4,020.76 having been made on behalf of six clients. It was partly rectified by transfers from office account on 3rd and 12th February 1982 totalling £858.01.
5. The major part of the shortage, £4,020.76 stemmed from a debit balance on a client ledger account relating to a Mr and Mrs V Fuller. The firm had acted for Mr and Mrs Fuller in connection with a property purchase, the respondent having the conduct of the matter. No separate client ledger account was maintained for these clients, the relevant financial transactions being recorded on the account of Mr A. Dickson (Mrs Fuller's father). The matter was completed on 24th March 1980 following which the Dickson client ledger account showed a credit balance in respect of Mr and Mrs Fuller's purchase of £370.60. On the 25th and 26th March 1980 cheques for £2,000.00 and £1,924.41 received on 24th March from Mr Dickson for the account of Mr and Mrs Fuller and recorded on the Dickson client ledger account were dishonoured. The retrospective charging of these dishonoured cheques to the ledger account placed it in debit in respect of Mr and Mrs Fuller by £3,553.81 at 24th March 1980. Further payments, on 25th March and 23rd April of £390.60 and £76.35 respectively increased the over payment to £4,020.76, which remained the position at the date of the inspection by Mr Gallacher.

6. Mr Gallacher also found that there was a debit balance on the client ledger account of the Executors of E. McKenzie deceased in the amount of £580.73. The respondent had acted on behalf of the executors of E. McKenzie deceased who died in 1974 leaving a net estate of £3,075.63. Save for the payment of two pecuniary legacies of £500 each the administration of the estate was completed by September 1974 and the firm's costs agreed at £88.80. On 7th November 1979 the relative client ledger account was credited with £697.37 following the closure of a designated deposit account maintained for the benefit of the sole remaining unpaid legatee, Mr C.N. McKenzie. On 9th November 1979 the account was charged with a client account payment of £639.05 in settlement of a bill of costs for that amount on 8th November leaving the account in credit by £58.32. On 22nd September 1980 the account was charged with a further client account payment of £639.05 (being in settlement of the outstanding legacy) thereby placing the account in debit by £580.73 and this remained the position at the inspection date.
7. The respondent's Accountant's Report for the year ended 5th April 1980 showed cash shortages on client account of £1,313.64 at the 30th September 1979 and of £4,324.86 at 5th April 1980. The shortage at 30th September 1979 had arisen as a result of overpayments on account of seven clients totalling £564.08 and of an improper payment from client bank account of £749.56 in respect of office rates. On 3rd September 1979, the client bank account had been charged with a payment for office rates the relevant cheque being signed by the respondent. The improper payment was rectified on 5th December 1979 by a transfer from the office bank account. The respondent admitted to Mr Gallacher that his statement which he had made in the letter to The Law Society of 25th September 1980 to the effect that "there was ample on office account to pay these rates" was incorrect in that in fact the office bank account had been in credit by only £1.21 on 24th August 1979 the date when the relative client account cheque was issued.
8. The shortage at 5th April 1980, of £4,324.86 was caused by over payments made on behalf of six clients. The largest of these in the amount of £4,020.76 had arisen in relation to Mr and Mrs Fuller.
9. Mr Gallacher also found that there was a debit balance of £275.00 on the client ledger account of Mr P. Rogers, for whom the respondent had acted in connection with a property transaction. On 28th April 1980 the relevant client ledger account had been charged with £275.00 when no funds stood to its credit thereby placing it in debit by that amount. The account remained in debit at all times until 26th November 1980 when the over payment was eliminated by a transfer from office account.

10. Mr Gallacher also considered the matter of the Trustees of W.R. Affleck deceased. He found that the firm had acted for the respondent and Mr C.J. Cocks (a former Principal of the firm) in their capacity as Trustees of the estate of W.R. Affleck deceased who had died in 1911 the respondent and Mr Cocks being appointed Trustees on 27th November 1951. The sole remaining life tenant was a Miss H.C. Affleck. An examination of the available documentation showed that the Trust Funds were invested mainly in fixed interest securities principally City of Liverpool Bonds. On 10th April 1978 the approximate value of funds invested was some £10,000 of which £7,200 was held in City of Liverpool Bonds.
11. On 13th November 1978 the firm had received and lodged in client account £1,200 being the capital repayment to the Trustees of a City of Liverpool Bond maturing on 10th November 1978. On the same day the account had been charged with a client account payment of £1,200 purporting to be in settlement of a bill of costs raised on 13th November in the following terms:-

TRUSTEES OF W.R. AFFLECK DECEASED
(C.J. Cocks and W.E. Capper) 13th November 1978

1951	TO OUR CHARGE for administration of this Trust and general work upon including all attendances and correspondence	£1,150.00
to		
date	ADD Proportion of V.A.T.	50.00
		<hr/>
		£1,200.00
		<hr/>

12. The income statement of the Trust for the half year ended 10th April 1979 contained no charge for the above bill of costs but did include a charge for the following namely

"Bartley, Cocks & Bird

Management Charges October 1978	£5.40
Management Charges April 1979	£5.40.

The respondent agreed that neither the capital receipt nor the charge for costs each in the amount of £1,200 had been disclosed in the relevant Trust accounts. Furthermore he was unable to produce any evidence which indicated that his co-trustee Mr Cocks had been advised or had authorised the costs charged to the trustees' ledger account.

13. On 12th November 1980 the firm had received and lodged in office account £1,500 being the capital repayment to the trustees of another City of Liverpool bond maturing on 5th November 1980. Lodgement of these funds in office account had the effect of reducing the overdrawn office bank balance at 11th November of £7,168.49 and created a credit balance on the office section of the clients' ledger account of £1,499.50. On 11th December 1980 the office section of the clients' ledger account was charged with a bill of costs, couched in the following terms -

<u>Trustees of W.R. Affleck, deceased</u>		22nd December 1980
Sept. 1976	To our charges in connection with an investigation in an endeavour to trace the relatives of the residuary legatees named in the Will, including many interviews in considerable detail	
Aug. 1977		£1,304.37
		£195.63
		<hr/>
		£1,500.00
Settled in Account	9/47	<hr/>

14. The respondent was unable to produce to Mr Gallacher any documentary evidence that would indicate that he had been conducting a search for missing relatives of the residuary legatees. He said that he had had "interviews" with various persons in his office. He did not however produce any attendance notes to substantiate this contention. He was also unable to produce any evidence which indicated that his co-trustee Mr Cocks had been advised of or had authorised the costs charged to the trustees ledger account.

15. On 17th June 1982 at the Crown Court of Liverpool the respondent was upon his own confession convicted upon indictment of four counts of forgery, four counts of obtaining money on a forged instrument and five counts of theft and was sentenced to two years imprisonment on each of thirteen counts concurrent and was Ordered to serve six months imprisonment immediately, the balance to be suspended.

16. There is no appeal pending by the respondent against either conviction or sentence.

The Tribunal FIND the allegation to have been substantiated and they ORDER that the name of the respondent William Eric Capper formerly of Liverpool and now or recently of No.43A Stoneby Drive, Wallasey, be struck off the Roll of Solicitors of the Supreme Court and that he do pay to the applicant the applicant's costs of and incidental to this application and enquiry including the costs of the accountant employed by The Law Society to inspect the firm's books of account such costs to be taxed by one of the Taxing Masters of the Supreme Court.

DATED this 5th day of January 1983

on behalf of the Tribunal

CHAIRMAN

No.4676/1982
3483

IN THE MATTER OF WILLIAM ERIC CAPPER
a Solicitor

AND

IN THE MATTER OF THE SOLICITORS' ACT 1974

F I N D I N G S A N D O R D E R

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors' Act 1974

DATED this 5th day of January 1983