Neutral Citation No. [2010] NICC 3 | *Ref:* **HAR7717**

Judgment: approved by the Court for handing down | *Delivered:* **22/1/2010**

*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

ALAN GEORGE NURSE

HART J

[1] The defendant is to be sentenced on his pleas of guilty to 14 counts, one of theft, one of forgery, and twelve of false accounting, committed by him whilst practising as a solicitor.

[2] On Count 1 he has pleaded guilty to the theft of £481,465.24. Whilst the particulars of offence in the indictment originally alleged that he had stolen the amount of "£640,000 or thereabouts", further investigation of the accounts of his practice established that the amount that he had taken from his clients' accounts to which he was not entitled for work done on their behalf was the lower figure of £481,465.24 that has been accepted by the prosecution. He originally pleaded not guilty to this count when it alleged the larger amount, but was re-arraigned and pleaded guilty on 23 November 2009 when the particulars of offence were amended to state the lower figure.

[3] Count 13, the count of forgery, relates to the affairs of an individual to whom I shall refer as P, and nothing should be published which would identify P because P is a vulnerable person whose financial affairs are under the care of the Office of Care and Protection of the High Court. When P's father died he left his property to P and his brother M. Because M pre-deceased his brother this meant that the entirety of the estate passed to P. During police interviews the defendant admitted drawing up bills of costs for the estate account which were unjustified and using the excess money he took for his own purposes. In addition, he forged a document which purported to be signed by P authorising the defendant to take £17,000 from money he held as the result of the sale of property belonging to P. The defendant pleaded guilty to this charge upon arraignment.

[4] Upon arraignment the defendant also pleaded guilty to the remaining twelve counts of false accounting. In essence what the defendant did in each case was to debit a number of accounts with inflated amounts for fees, or took sums from clients' accounts to meet payments from his office account. In one instance, Count 2, he undervalued the tax liability on an estate, thereby creating a credit balance in the ledger that he applied for other purposes, advising the Inland Revenue on the appropriate form IHT200 that the estate was worth £331,619.42 whereas it was worth £548,529.75.

[5] As the dates in the various counts demonstrate, these offences were systematically perpetrated over some five and a half years. The theft in count 1 covers the period between January 1997 and August 2002; Count 6 relates to 16 December 1999; Count 2 to 24 November 2000, Count 3 to the years 2001 to 2002, and Count 14 to the period between 30 April 2002 and 9 August 2002.

[6] These offences came to light because his bookkeeper became suspicious of irregularities in the books of the practice. On her return from holiday in September 2001 she discovered a number of cheques were missing from the client account cheque book. The stubs had been completed to read "Nurse & Jones Office Account", or left blank. The defendant promised to provide names and invoices when she raised this with him but none were forthcoming. A similar episode occurred following her return to work in January 2002 after the Christmas holidays. On 14 January 2002 the Law Society's compliance officer called to examine the books of the practice, and she informed him of these problems. Mr Ramsey QC (who appears on behalf of the prosecution with Mr McAughey) stated that the compliance officer informed the Law Society of his concerns, and as a result disciplinary proceedings were instituted against the defendant by the Law Society.

[7] During the succeeding months a number of uncompleted invoices had arisen, there was a substantial amount unaccounted for, and other irregularities in the bookkeeping were noticed by the bookkeeper. The compliance officer called again on 17 July 2002 to check the firm's books following his discoveries during his earlier visit. It had been his intention to make a visit in June, but that had been postponed to July because the defendant had a hospital appointment. Following his July visit the compliance officer reported the matter to the Law Society, and on 8 August 2002 it passed a resolution under the provisions of Article 36(1)(b)(ii) of the Solicitors (NI) Order 1976 taking control of the practice. This had the effect of freezing the accounts of the practice. The practice was then sold in October 2002.

[8] Due to the complexity of the defendant's accounts the investigations into the defendant's affairs has been a protracted one. In January 2003 the Law Society reported the matter to the police. The defendant was questioned

by the police in 16 interviews between September 2003 and November 2005, when he admitted what he had been doing in the particular cases put to him. At that time the full extent of the amounts involved had not been finally established. These charges were brought by way of a summons issued for a preliminary inquiry originally intended to be held on 23 April 2008. Following a number of adjournments at the request of the defence the defendant was committed for trial on 6 February 2009. He was arraigned on 20 March 2009 when he pleaded guilty to all of the counts except those of theft. As the defence instructed forensic accountants to advise the defendant as to the correct amount of the deficiency for which he was responsible it was not possible to fix the case for trial until November 2009, and on 23 November 2009 he pleaded guilty to Count 1 in the amended amount already referred to. His pleas of not guilty to the remaining counts of theft were accepted by the prosecution and ordered to lie on the file on the usual terms. Whilst the investigation by the Law Society and the police into his affairs was protracted, this was undoubtedly contributed to by the complex nature of the defendant's affairs, and the need to establish what he was properly entitled to claim against his client's accounts for work done, and so establish the net deficiency that represented the amount he had taken to which he was not entitled.

[9] In R v Gault [1989] NI 232 the Court of Appeal in Northern Ireland stated that courts in this jurisdiction should follow the guidelines laid down for cases of dishonesty by persons in positions of trust by the Court of Appeal in England in R v Barrick (1985) 7 Cr App R (S) 142, and since then the courts in this jurisdiction have followed the approach of the English courts when dealing with cases of dishonesty involving a breach of trust by such persons. In Gault the Court of Appeal approved the following remarks by Lord Lane CJ in Barrick when he said:

> "The following are some of the matters to which the court will no doubt wish to pay regard in determining what the proper level of sentence should be: (i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the fraud or the thefts have been perpetrated; (iii) the use to which the money or property dishonestly taken was put; (iv) the effect upon the victim; (v) the impact of the offences on the public and public confidence; (vi) the effect on fellow employees or partners; (vii) the effect on the offender himself; (viii) his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and

> the start of his trial; finally, any help given by him to the police."

[10] In Barrick the Court of Appeal laid down guidelines as to the length of sentence appropriate to charges involving particular sums of money, and as these guidelines had been given in 1985, changes in the value of money meant that it was necessary to revise them. That was done by the Court of Appeal in England in R v Clark [1998] 2 Cr App R 137 where Rose LJ said at page 142:

> "In the light of all these considerations we make the following suggestions. We stress that they are by way of guidelines only, and that many factors other than the amount involved may affect sentence. Where the amount is not small, but is less than £17,500, terms of imprisonment from the very short up to 21 months will be appropriate; cases involving sums between £17,500 and £100,000, will merit two to three years; cases involving sums between £100,000 and £250,000, will merit three to four years; cases involving sums between £250,000 and £1 million will merit between five and nine years; cases involving £1 million or more, will merit 10 years or more. These terms are appropriate for contested cases. Pleas of guilty will attract an appropriate discount. Where the sums involved are exceptionally large, and not stolen on a single occasion, or the dishonesty is directed at more than one victim or group of victims, consecutive sentences may be called for."

In Clark, where the amount taken by the defendant was accepted as being in excess of £300,000, and so fell within the same bracket as the present case, the defendant repaid some of the money, but there was still a very substantial shortfall in the region of at least £180,000. There were also other mitigating factors personal to the defendant. The Court of Appeal reduced the sentence on a plea of guilty from five to four years imprisonment.

[11] These figures set out in Clark have not been further revised to take account of the change in the value of money due to inflation since 1998, but on any showing the present case falls within the bracket of "cases involving sums between £250,000 and £1 million", which means that the appropriate sentence would have been between five and nine years imprisonment if the case had been contested.

[12] As a solicitor the defendant was in a particular position of trust because he was permitted by law to handle clients' money. Members of the public placed their affairs in his hands, and he abused that trust to commit

these offences. This abuse of trust is the most serious aspect of these offences, because, as Hodge J observed in R v Miles [2007] 2 Cr App R (S) 5 at page 23:

> "Here, we have a solicitor who was, as [are] all solicitors, permitted by legislation to handle clients money. Solicitors are officers of the court. They owe a duty of utmost good faith to their clients and to the public at large. Any breach of that damages the victims, it damages their colleagues, it damages the profession at large and reduces public confidence in the profession."

[13] A relevant consideration in the present case is that one of the charges to which the defendant has pleaded guilty is a charge of forgery. Mr Harvey QC (who appears for the defendant with Mr Ciaran Harvey) pointed out that the defendant never presented the forged document to the Official Solicitor. That may be so, but he forged it to provide cover for himself should an explanation be required for his having taken money from this vulnerable individual's account, because the compliance officer's initial inspections took place between 14 and 30 January 2002, and the forgery was committed on 31 January 2002. As was pointed out in R v Lincoln [1994] 15 Cr App R (S) 338 forgery must be visited with immediate custody except in the most exceptional cases. In R v Torkoniak [2005] 1 Cr App R (S) 27 at p. 131 the Court of Appeal emphasised that offences of forgery and perjury "were particularly serious in circumstances where they were committed by an officer of the court. Accordingly the consecutive sentence of one year for perjury was clearly right as a matter of principle." For a solicitor to commit forgery is a particularly grave matter, and, had the case been contested, I consider that offence would require a consecutive sentence in respect of Count 13.

[14] A further aggravating factor is that defendant was subject to disciplinary proceedings in 1998. This matter was explored with the defendant at pages 184 and following of Section E of the committal papers, and was referred to by Dr Harbinson, a consultant psychiatrist engaged on behalf of the defendant, in her psychiatric report of 16 October 2003. It appears that the practice in which the defendant was a partner at that time faced disciplinary proceedings because money was being held in an office account which should have been paid into clients' accounts. As a result of these proceedings the defendant was not permitted to practise solely on his own account. I regard it as an aggravating feature of the case that the defendant embarked upon these offences after he had been subjected to disciplinary proceedings by his professional body. Whilst it is not suggested that the matters which resulted in disciplinary proceedings in 1998 involved offences of dishonesty, nevertheless they should have brought home to him,

if that needed to be done, that his clients' monies had to be dealt with in a proper and honest fashion.

[15] A separate aggravating factor is that the defendant committed the offences in Counts 13 and 14 after the first visit of the compliance officer in 2002, even though he knew that his affairs were under investigation. This demonstrates a determination to continue offending despite the obvious risk of detection as a result of the investigation of his affairs that was underway.

[16] There are therefore a number of aggravating features of the case.

(1) The charge of theft involves a very substantial amount of money.

(2) These offences were carried out over a period of some 5½ years.

(3) The previous disciplinary proceedings relating to the handling of clients' money.

(4) The further offences committed whilst investigations were being carried out in 2002.

(5) That the accused committed an offence of forgery.

[17] However there are a number of mitigating factors which have been urged on the court by Mr Harvey QC, and which I must take into account in the defendant's favour as reducing the sentence. The first, and most important, is that the defendant has repaid all of the money stolen from his clients from his own resources. He has repaid a total of £593,298, the money coming from the sale of his family home and from his practice. This exceeds by £111,833 the amount which is the subject of the theft charge, the balance being retained by the Law Society with the defendant's consent as a contribution by him to its costs of dealing with these matters.

[18] The second mitigating factor is that the defendant has admitted throughout that he had taken money from his clients. When the Law Society put its own solicitors into the practice he accepted that there was a deficiency. When the defendant was interviewed by the police he gave a frank account of what had happened, and Mr Ramsay QC accepted that the defendant did co-operate with the police during this investigation. The defendant then pleaded guilty to the charges of forgery and false accounting upon arraignment. He ultimately pleaded guilty to the charge of theft, but given that further investigation of the complex nature of his accounts was necessary prior to trial, and resulted in a significantly lower figure being agreed between the accountants acting on his behalf and those acting on behalf the Law Society, I consider that the defendant should be given the maximum credit for his co-

operation with the police and the Law Society, and his plea of guilty to the charge of theft.

[19] A third mitigating factor upon which Mr Harvey QC placed considerable emphasis is that these matters have been hanging over the defendant's head for many years. The practice was closed by the Law Society on 8 August 2002 and it is now January 2010. As Lord Lane CJ pointed out in Barrick's case it is appropriate to take into account the delay that has taken place in bringing this matter to a conclusion. There has been very long delay indeed in the present case. This is notwithstanding that the delay may have been due to, or largely due to, the complexity of the state of affairs that he created. It is clear from the reports from Dr Harbinson that the defendant has, not surprisingly, found it very difficult to obtain regular or remunerative employment during the seven and a half years these matters have been hanging over his head. The strains imposed on him by his financial problems, and on his children by the charges, his domestic difficulties and frequent changes of accommodation, have been very considerable. These are, of course, due to his offences, but nevertheless they are matters that can properly be taken into account in mitigation of sentence as can be seen from Lord Lane's remarks.

[20] Further mitigating factors relate to the circumstances in which the offences occurred and the defendant's own health at the time and subsequently. I have the benefit of a lengthy report dated 8 September 2008 from the defendant's general practitioner. I do not consider it necessary to go through all of the details set out in that report, many of which have also been commented upon by Dr Harbinson in her reports. In June 1996 the defendant was diagnosed with pericarditis involving chest pain and shortness of breath, and he was admitted to hospital in June and July 1996. For the remainder of 1996 it appears that his condition was treated with medication. At that time, his wife was seriously ill. Cancer had been diagnosed in January 1996 and she underwent a lengthy course of chemotherapy. Tragically, her condition deteriorated, and from January 1997 until her death on 16 May 1997 she needed a great deal of care and attention, much of which was given by the defendant himself. The defendant's GP, Dr Willis, states in his report:

> "I was in and out of their home a lot in those months from January 1997, visiting 24 times between January and April. Mr Nurse was devoted to his wife, constantly seeking to reassure her, when she became anxious about the situation. As her medical history shows they had to cope with a lot of set backs and a lot of severe side effects from the treatment. As well as all of this he did his best to meet her physical needs, run the house and provide some semblance of normality for their two children. As I said in the

> report I wrote for him in March 1998 I do not know how he kept going over those all eighteen months of her life and then he had to cope with the grief once she died."

It is evident from Dr Harbinson's reports that in the period leading up to and following his wife's death, the defendant was under a great deal of pressure due to his domestic circumstances, and the pressures on him of running his practice.

[21] In 1998 cardiac investigations were carried out, and a coronary angiogram disclosed the existence of three blocked arteries. At that time the defendant was treated medically rather than being offered an operation. A review in March 2002 led to the conclusion that a by-pass would be of benefit, and further tests in 2002 and 2003 led to his undergoing by-pass surgery in April 2004. He developed some complications because he had fluid on one lung which had to be drained, as well as an infected wound of the groin, but he had recovered by the end of 2004.

[22] In her reports Dr Harbinson sets out the various difficulties which the defendant has had to cope with since 2004 to the present day. In her report of 17 August 2008 she says:

> "He has reflected at length on his offence behaviour. He regularly asks himself how he managed to get into this situation. He has been charged with both false accounting and theft. He accepts that he is guilty of false accounting. He does however have difficulty accepting that he is guilty of theft. He does not believe he had the necessary mens rea. It was not his intent to permanently deprive anyone. He told me he gradually lost sight of the amount of money he would have to repay. He comforted himself with the thought that he could sell his home and his business if required. He also thought that he would be doing work that would bring him an income, although he was mistaken in that. He said he never actually short changed any clients. He continually 'robbed Peter to pay Paul'. He feels that gradually he lost sight not only of what was criminally wrong but what was morally wrong. The pressure he was under on a day to day basis with his home and his work situation clouded his judgement. He was unable to take the long term view or to appreciate the long term consequences of his behaviour."

[23] The reference in the concluding sentences of Dr Harbinson's observations to the defendant losing sight not only of what was criminally wrong, but what was morally wrong, is no doubt true of many defendants who find themselves exposed to the temptation to steal clients money which has been entrusted to them. This cannot excuse the criminal conduct which the defendant has admitted.

[24] I consider the mitigating factors to which I have referred, namely his repayment of all of the money involved, his acceptance throughout that he had acted improperly, his plea of guilty, the effect upon his health and that of his children, and the pressures he was under leading up to, and in the aftermath of, his wife's death, amount to substantial mitigating factors which justify my imposing a shorter sentence than would otherwise have been required.

[25] In view of the gravity of the offences committed by the defendant, and the aggravating factors to which I have referred, the combined effect of the mitigating factors do not justify the imposition of a non-custodial sentence. The defendant was a very experienced solicitor who abused the trust placed in him to steal a very substantial amount of money over a long period of time, and in addition committed a further very grave offence when he forged the document which is the subject of Count 13. I am satisfied that these offences require an immediate custodial sentence.

[26] These offences were committed at a time when the law requires me to consider whether I should impose a custody probation order. I do not consider that this is an appropriate case for the imposition of such an order. The likelihood of re-offending has been assessed as low in the pre-sentence report, and I am satisfied that no useful purpose would be served by imposing a custody probation order.

[27] Were it not for the mitigating factors to which I have referred, had the defendant contested these charges and been convicted the sentence would have been at least seven years' imprisonment, namely six years for the theft and false accounting and a consecutive sentence of one year for forgery. Taking into account all of the mitigating factors to which I have referred the least sentence I can impose is one of three years' imprisonment. The accused will be sentenced to three years' imprisonment on each count, with the exception of Count 13, in respect of which he will be sentenced to 12 months' imprisonment. All the sentences will be concurrent.