

IN THE MATTER OF MILES ADRIAN KENTISH and [*RESPONDENT 2*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J P Davies
Mr P Wyatt

Date of Hearing: 11th February 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by George Marriot, a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL on 19th February 2009 that Miles Adrian Kentish of London SW18, solicitor and [*Respondent 2*], of London SW16, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the First Respondent are that he:

1. misappropriated client funds. This allegation was put against the First Respondent on the basis that he had been dishonest;
2. made improper withdrawals from client account by round sum transfers;
3. failed to keep accounting records properly written up, contrary to Rule 32 of the Solicitors Accounts Rules 1990 (“SAR”);
4. failed to ensure compliance with the Rules, contrary to Rule 6 SAR;
5. failed to remedy breaches of the Rules promptly upon discovery, contrary to Rule 7 SAR.

The allegations against the Second Respondent are that he:

1. withdrawn;
2. made improper withdrawals from client account by round sum transfers;
3. failed to keep accounting records properly written up, contrary to Rule 32 SAR;
4. failed to ensure compliance with the Rules, contrary to Rule 6 SAR;
5. failed to remedy breaches of the Rules promptly upon discovery, contrary to Rule 7.

By a supplementary statement under Rule 7 dated 15 September 2009 the additional allegations against the First Respondent are that he:

6. failed to comply with an undertaking contrary to Rule 10.05 of the Solicitors Code of Conduct 2007 (“SCOC”);
7. failed to act with integrity, contrary to Rule 1.02 SCOC;
8. behaved in a way which was likely to diminish public trust in the profession, contrary to Rule 1.06 SCOC; and
9. failed to deal with the SRA in an open, prompt and cooperative manner, contrary to Rule 20.03 SCOC.

The additional allegations against the Second Respondent were that he:

6. withdrawn;
7. withdrawn;
8. withdrawn;
9. failed to deal with the SRA in an open, prompt and cooperative manner, contrary to Rule 20.03 SCOC.

The application was heard at the Courtroom, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11th February 2010 when George Marriot appeared as the Applicant, the First Respondent did not appear and was not represented and the Second Respondent appeared and was represented by Mr Gregory Treverton-Jones QC of 39 Essex Street, London WC2R 3AT.

Preliminary Matters

1. The applicant invited the Tribunal to proceed in the absence of the First Defendant, Mr Miles Adrian Kentish. The Applicant referred the Tribunal to their memorandum of application for substituted service following a hearing of the matter of 9 June 2009. At that hearing the Tribunal agreed that there could be substituted service whereby an enquiry agent effected service by delivery through the letterbox of Mr Kentish’s residential address. The Applicant had presented to the Tribunal two witness statements by Robert Drury, a trainee solicitor with Gorvins Solicitors who confirmed

that he had carried out the substituted service on the First Respondent on 2nd October 2009. In a further hearing before the Tribunal on 1st December 2009 the Tribunal had ordered that the hearing be adjourned and the second witness statement of Robert Drury confirmed that on 22nd December 2009 he had posted notification of the relisted hearing through the letterbox at the First Respondent's address in accordance with the Tribunal's order for substituted service of 9th June 2009.

2. The Tribunal, being content that substituted service had indeed been carried out in the manner ordered on 9th June 2009 were content that the matter should proceed in the absence of the First Respondent.
3. The Applicant asked that allegations 1, 6, 7 and 8 against the Second Respondent be withdrawn and the Tribunal consented. Allegation 1 against the Second Respondent had been put on the basis that with regard to that allegation the Second Respondent had been dishonest. The Applicant stated that he did not wish to pursue the allegation of dishonesty against the Second Respondent. In those circumstances the Applicant indicated that all of the other allegations made against the Second Respondent were admitted. In the absence of the First Respondent and the fact that he had not responded to any of the correspondence from the Applicant or the Tribunal the matter would have to proceed on the basis of a denial of each allegation.

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent Miles Adrian Kentish of London SW18, solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000 on a several basis.

The Tribunal Orders that the Respondent [*Respondent 2*] of London SW16, solicitor, be suspended from practise as a solicitor for the period of one year to commence on the 11th day of February 2010 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000 on a several basis, such costs not be enforced without the prior consent of the Tribunal.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 statement dated 19th February 2009, together with accompanying bundle which included a Forensic Investigation Report ("FIR") dated 20th June 2008, the Rule 7 Statement dated 15th September 2009, together with accompanying bundle, the statement of the Second Respondent together with accompanying bundle and the admissions of the Second Respondent.

The Facts are set out in paragraphs 1-48 hereunder:-

1. The First Respondent was born on 20th April 1959 and was admitted as a solicitor on 1st February 1991. His name remains on the Roll.
2. The Second Respondent was born on 21st March 1957 and was admitted as a solicitor on 15th March 1988. His name remains on the Roll.
3. At all material times the Respondents were the two partners in Stanfords Solicitors of 1519 London Road, Norbury, Streatham, London SW16 4AE ("the Firm"). The partnership had been in existence since 1999.

4. The First Respondent was responsible for conveyancing matters and the Second Respondent was responsible for litigation.
5. On 13th June 2008, the SRA commenced an investigation into the Firm. The investigation was suspended to allow an interim FIR to be prepared. Amongst other things, the report stated that no reconciliations had been provided to the SRA and no list of client matter balances was available. Following the interim report the SRA resolved to intervene into the Firm on 24th June. The intervention was effected on 26th June 2008.

Round Sum Transfers

6. The Respondents made a large number of round sum transfers from client account to office account. Every transfer from client account to office account made between 31st January 2008 and 5th March 2008 was a round sum.
7. The firm's client cash book for February 2008 confirmed that there were twenty-two round sum transfers from client account to office account totalling £30,500.00. These transfers ranged from £500.00 to £3,000.00. These transfers were confirmed by bank statements.
8. The firm's list of delivered bills showed that for February 2008 the firm had billed £7,838.30 including disbursements. The list of bills delivered suggested that the actual figure transferred, as listed in the column "Transfer" was £7,719.92.
9. An analysis of the firm's client to office transfer authorisation sheets revealed that the Respondents made round sum transfers in excess of the amounts billed to clients.
10. A transfer sheet dated 11th February 2008 listed two transfers to be made from client account to office account in respect of two matters; one for £200.00 and one for £93.20. The firm's list of bills confirmed these amounts. The total transferred at the bottom of the sheet and the amount actually transferred was £1,000.00.
11. Excessive round sum transfers also occurred on 1st February 2008, 5th February 2008, 7th February 2008, 15th February 2008 and 25th February 2008. In total, an additional £2,364.67 was transferred without reference to a specific matter.
12. Many of the transfers from client account to office account were not allocated to a specific matter. These unallocated transfers totalled £19,500.00.

Partners' Drawings

13. The partners' drawings from the Firm for April 2007 to April 2008 in comparison with the Firm's billing were as follows:

Month	Firm's gross fee income	1 st Respondent's drawings	2 nd Respondent's drawings
April 2007	£9,835.59	£13,801.98	£3,100.00
May 2007	£8,441.89	£12,262.46	£3,213.48
June 2007	£7,324.40	£17,051.94	£4,112.46
July 2007	£12,520.65	£10,037.46	£2,612.46
August 2007	£13,992.06	£6,479.50	£2,808.30
September 2007	£12,688.63	£13,445.86	£3,712.46
October 2007	£8,963.60	£15,094.41	£3,112.46
November 2007	£13,109.12	£15,962.46	£3,612.46
December 2007	£9,548.03	£14,237.46	£3,012.46
January 2008	£10,046.52	£12,117.46	£4,198.26
February 2008	£7,534.30	£20,953.90	£2,612.46
March 2008	£12,739.88	£14,882.64	-
April 2008	£9,790.17	£11,857.32	£32.32
GRAND TOTAL	£136,584.84	£178,184.85	£36,138.59

14. In total the Respondents withdrew £214,323.44. For the period of February to April 2008 the First Respondent withdrew £47,693.86, and the Second Respondent withdrew £2,644.78, including March where he took no drawings from the firm. The firm's billing for that month had been in excess of £12,000.00.

Client Account Shortfall

15. The firm's Accountant's Report for the period April 2006 to March 2007 was received by the SRA on 29th February 2008.
16. That Report recorded that on two occasions during the accounting period client liabilities exceeded monies held in client account. On 31st August 2006 the shortfall was calculated at £115,039.09. This was made good on discovery. By 31st March 2007 a further shortfall of £130,992.85 had accrued. This also had been made good upon discovery.
17. At the time of the SRA's investigation into the firm the Second Respondent commented that he believed that there was a shortfall of approximately £150,000.00 on the client account.
18. The SRA, during its investigation in June 2008 examined five client matter files. The FIR stated that as a result of the examination on 31st May 2008, in respect of those five files, the firm's liability to its clients was £832,527.25.
19. An examination of the firm's client account on 31st May 2008 showed a cash balance of only £471,812.73. At 31st May 2008 there was a minimum client cash shortage of £360,714.52.

The matter of client FB

20. The FIR reported upon the matter of FB for whom the firm acted in relation to the sale of a property in Lewisham.

21. The client ledger recorded an undated entry on the office side of the ledger in respect of office copy entries. On 18th April 2008 the ledger recorded receipt of completion monies totalling £161,982.56 into client account. Confirmation of the transfer from the bank recorded the sum as £161,982.25.
22. On the same day the firm raised a bill for £840.13 and £898.13 was transferred from the client account, leaving the office ledger with a credit balance of £23.00.
23. The firm's list of bills for April 2008 included a bill in this matter for £1,038.11 profit costs and £47.00 disbursements. The bill list stated that £1,000.00 had been transferred.
24. On 18th April 2008 £2,000.00 was transferred from the ledger to another ledger maintained for FB, on account of costs. By 21st April 2008 this money had been transferred to office account in respect of profit costs. The firm's list of bills confirmed that a bill for £2,000.00 had been raised on 14th April 2008. It was unclear why the monies had been transferred to office account in three separate transactions.
25. The balance on the client's ledger was £159,084.43. No further transactions were recorded on the ledger.

The matter of client NB

26. The firm acted for NB in relation to the sale of a property in Bromley, Kent.
27. On 17th April 2008 the matter ledger recorded the receipt of £300.00 into client account. On the same day a bill for this amount was raised. These monies were transferred to office account. The entry recording the transfer was undated. There was no record of a £300.00 bill being raised in this matter on the firm's list of bills delivered.
28. Office copy entries had been charged to office account and a further bill for £852.13 had been raised. These book entries were undated.
29. On 27th May 2008, the proceeds of sale were received from the purchaser's solicitor and credited to the client account.
30. On 28th May 2008 £898.13 was transferred from client account to office account. The effect of this transfer was to put the office ledger in credit by £46.00. The firm's list of bills recorded that a bill for £898.13 had been delivered on 28th May 2008.
31. The balance on the client ledger was £274,101.87. No further transactions had been recorded on the ledger.
32. The matter file contained a fax from the firm to the mortgagee's redemption department confirming that it had instructed its bank to transfer £117,789.97 to it to redeem the charge on the property. A completed CHAPS payment form made out to the mortgagee for £117,789.37 and one for £152,573.44 payable to NB were in the file.
33. The firm acted in a probate matter. On 29th August 2007 the client ledger recorded receipt of £250.00 on account of costs. On the same day a bill for this amount was

raised and that sum was transferred from client to office account. This bill was recorded on the firm's list of bills.

34. A further credit of £45.00 was received on 3rd April 2008 and paid out on 11th April. The description given was "HMCS". The cheque to HMCS was dated 8th April 2008.
35. On 29th May 2008 the client ledger recorded receipt of monies from the Lloyds TSB account of the deceased.
36. An invoice, dated 4th June 2008, was sent to VS, the beneficiary of the deceased's estate, for £1,006.00 of which £940.00 was profit costs. The firm's list of bills recorded a bill for £500.00, delivered on 28th May 2008.
37. The matter file contained a CHAPS payment form for £15,748.66 made out to VS and dated 4th June 2008. There was no record of this transfer on the ledger.
38. On a statement of account the payment side recorded the payment of £15,748.66 to the client and £1,006.00 in payment of legal costs and disbursements. The receipts side contained £16,461.66 from Lloyds TSB, £250.00 on account of costs and £43.00 "Chequer(sic) from You". The balance on both sides was £16,754.66.
39. The cheque made out to HMCS was for £45.00, not £43.00 as stated in the account summary. The list of bills recorded legal costs of £500.00.

The matter of client YC

40. The Firm acted for YC in relation to the re-mortgage of a London property.
41. The matter ledger contained two undated entries on the office side in relation to office copy entries and a bankruptcy search. The ledger also contained an undated entry on the client side, a debit of £194.54 in respect of searches undertaken against the property causing an overdrawing of that sum. The entry was undated and it was unclear how long the client ledger remained in this state.
42. On 28th February 2008 £225,000.00 was received by way of mortgage advance and credited to the client ledger. On the same day a bill for £816.63 was raised. £946.63 was transferred from client account to office account in respect of fees and disbursements. The firm's list of bills suggested that £130.00 of disbursements had been incurred on the transaction. The ledger contained disbursements totalling £18.00.
43. On the same day that mortgage funds were received, the ledger recorded a debit from client account of £60,000.00, described as payment to the client. It had been for the benefit of a third party, SH. The CHAPS payment form was made out to YC. Thereafter £163,858.83 remained in client account. There were no further transactions recorded on the ledger. The matter file contained a mortgage redemption statement from Natwest.
44. The matter file also contained a final invoice to YC, dated 29th February 2008, for £2,801.63. The ledger did not record any transaction in relation to this invoice, which did not include the cost of office copy entries. The invoice did appear on the firm's list of bills.

The matter of client FE

45. The Firm acted for FE in relation to the remortgage of a property.
46. The matter ledger contained two undated entries on the office side in relation to office copy entries and a bankruptcy search. There was an undated entry on the client side, a debit of £194.54 in respect of searches on the property so that the client account was overdrawn by £194.54. Because the entry was undated it was not possible to determine how long the client account had been overdrawn. The invoice for the searches was for a different amount.
47. On 25th May 2008 the mortgage advance monies were received and credited to the client ledger, giving a credit balance of £71,020.46. There were no further transactions recorded on the ledger. The matter file contained redemption statements from Northern Rock, dated 16th May 2008 and 17th June 2008 quoting redemption figures of £101,808.70 and £101,819.51 respectively.

Allegation 6 against the First Respondent

Failure to comply with an undertaking (“the Undertaking”)

48. The First Respondent instructed KF Solicitors to act for him in relation to the remortgage of his residence (the Property) to FM Limited. The Property already had two charges registered against it but the remortgage did not create enough funds to satisfy both of the charges. Therefore KF were not in a position to complete. The First Respondent instructed KF to discharge the first charge on the Property and stated that the Second Respondent would redeem the second charge. On the date of completion the Firm provided an undertaking to KF to repay the second charge on the Property “within six weeks from the date of completion of the mortgage with FM Limited.” Relying on this undertaking, FM Limited advanced the mortgage monies. The firm failed to comply with this undertaking.

The Submissions of the Applicant

49. The Applicant submitted that the criminal standard of proof was to be applied in this case. The Applicant also referred the Tribunal to the case of Twinsectra v Yardley and Others [2002] UKHL 12 in which it was said by Lord Hutton that:

“Before there can be a finding of dishonesty it must be established that the Defendant’s conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.”

50. There was no allegation of dishonesty against the Second Respondent and an analysis of the Respondents’ drawings showed that the main beneficiary of the improper withdrawals from client account by round sum transfers had been the First Respondent. However, the Applicant pursued the allegations against the Second Respondent on the basis that there had been an abdication of his duty once he was on notice of the First Respondent’s behaviour. The Applicant submitted that the Tribunal could be satisfied so that it was sure that the First Respondent had been dishonest. He had both the opportunity and motive to take monies from client account and his

drawings clearly showed that he had, in the period between April 2007 and April 2008 taken more in drawings than the whole of the firm's gross fee income.

51. The undertaking the subject of allegation 6 against the First Respondent given by the firm on 28th March 2008 appeared to have been signed by the Second Respondent. However the Second Respondent denied having signed it and the Applicant could produce no evidence to contradict that assertion. The Applicant said that the undertaking had either been given by the First Respondent or on his behalf. The only person with the motive to give such an undertaking was the First Respondent. It was his reference on the letter which contained the undertaking.
52. The Applicant applied for costs in the sum of £16,083.18.

Submissions made on behalf of the Second Respondent

53. The Second Respondent had come to admit all of the allegations made against him. His practice with the First Respondent had worked very well until May 2006 when their respective wives had entered into a long legal argument over the sale of their jointly owned business properties. Following that difference of opinion he had hardly attended the office and he and the First Respondent had had an agreement whereby the First Respondent would continue to run and have responsibility for the office including all accounting and financial matters. The Second Respondent's own work consisted of a small litigation practice which provided him with a modest income.
54. Whilst the Second Respondent had to all intents and purposes been a "sleeping partner" he had had confidence that the accounting systems were working well. There had been a visit to the firm by the Professional Standards Unit of The Law Society during 2005 which revealed nothing untoward. It was not until February 2008 when the firm's Accountant's Report revealed a shortfall on client account of some £130,000 that things had started to go seriously wrong. The Second Respondent had been "flabbergasted" by this discovery and had told the First Respondent that it was his responsibility to make up the shortfall. The money raised to rectify the shortfall had all come from the First Respondent.
55. The matters complained of had all been dealt with by the First Respondent and all round sum transfers had been authorised by him via the firm's telephone banking arrangements. It was the Second Respondent's position that the First Respondent alone was responsible for all of these transfers.
56. The Second Respondent had not been aware of the First Respondent's drawings until the time of the investigation. His own drawings had been minimal.
57. The whole process made the First Respondent ill overnight and he had suffered a nervous breakdown. The First Respondent had disappeared.
58. The Second Respondent accepted that he fell down in his duty to manage the practice and apologised to both the SRA and the Tribunal. His testimonials showed that he was a very highly regarded solicitor who had now been ruined by the events before the Tribunal.
59. At the date of the hearing the Second Respondent was without means. He had lost his practising certificate for 18 months.

60. In the Second Respondent's submission there was no need for the public to be protected from him. He no longer envisaged practising in partnership or as a sole practitioner. The imposition of the ultimate sanction was not necessary.
61. In view of everything that had been said, Mr Treverton-Jones QC invited the Tribunal to assess his client's costs at a one fifth share of the total sum sought by the SRA.

The Tribunal's Decision and Findings

62. The Tribunal found all of the allegations against the First Respondent, including that of dishonesty, to have been proved. The Tribunal found that in taking money from client accounts and making drawings beyond the firm's total billed income the First Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard from the Applicant and carefully reviewed all of the evidence the Tribunal was satisfied so that it was sure that the First Respondent did not have an honest belief that he could use client monies in this way and therefore that he knew that what he was doing was dishonest by those same standards.
63. With regard to the Second Respondent the Tribunal found all of the remaining allegations against him to have been proved, indeed they had not been contested. The Tribunal had a particular concern that in March 2008, when he had known that the firm's Accountant's Report recorded a shortfall on client account and knew it was the responsibility of the First Respondent that he had not "blown the whistle" at that stage. Whilst the Second Respondent had made sure that his partner at that stage had paid the money back and he had begun to go into the office more regularly, the Tribunal concluded that he could have done more. There was no evidence that the Second Respondent had satisfied himself between April 2007 and March 2008 that no more money was being taken by the First Respondent. However the Applicant had not established the position between those two dates.
64. The Tribunal found that the dereliction of duty on the part of the Second Respondent was not such that a striking off order was merited. However it found that this was a serious case where the Second Respondent had effectively abandoned the practice. It was an aggravating factor that by allowing his name to be shown as a partner he had given the impression to the world that there were two partners operating in the firm.
65. This was a case where a period of suspension would underline the seriousness of the Second Respondent's behaviour. In addition the Tribunal recommended to the SRA that the Respondent in the future should only be permitted to act as a solicitor in employment approved by the Law Society and which offered in the reasonable opinion of the Law Society appropriate supervision, and where he was not, nor was held out to be, a partner nor should he be an officeholder or shareholder in any incorporated solicitor's practice and he should not be a training principal.
66. The Tribunal carefully considered the quantum of the Applicant's costs and the individual responsibility of each Respondent. To reflect the different culpability of the two Respondents the First Respondent should be responsible for £12,000 of the SRA's costs and the Second Respondent £3,000.
67. The Tribunal Ordered that the Respondent Miles Adrian Kentish of London SW18, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the

costs of and incidental to this application and enquiry fixed in the sum of £12,000 on a several basis.

68. The Tribunal Ordered that [*Respondent 2*] of London SW16, solicitor, be suspended from practise as a solicitor for the period of one year to commence on the 11th day of February 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000 on a several basis, such costs not be enforced without the prior consent of the Tribunal.

Dated this 22nd day of April 2010
On behalf of the Tribunal

A G Ground
Chairman