

IN THE MATTER OF BRYAN ROGER LIZZIMORE - Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D.J. Leverton (in the Chair)  
Mrs. E. Stanley  
Mr. K.J. Griffin  
Date of Hearing: Tuesday 11th July 1995

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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 Solicitors Complaints Bureau by Gerald Malcolm Lynch, solicitor, of 16 Warrior Square, Southend on Sea, Essex, on the 1st December 1994 that Brian Roger Lizzimore, solicitor whose address for service was Lizzimore Braithwaites, 65a Seven Sisters Road, Holloway, London, N7 6BU, might be required to answer the allegations contained in the statement which accompanied the application and such Order might be made as the Tribunal should think right.

The applicant filed with the Tribunal a supplementary statement dated the 10th April 1995 and a second supplementary statement dated the 5th May 1995. The allegations set out below are those contained in the original and two supplementary statements.

The allegations were that the respondent had:-

- (1) failed to honour the terms of undertakings given by him in connection with his practice as a solicitor;
- (2) failed, alternatively has unreasonably delayed in the payment of fees due to Counsel;
- (3) been guilty of unreasonable delay alternatively failed to act with reasonable expedition in connection with clients' affairs;
- (4) been guilty of unreasonable delay, alternatively failed to act with reasonable expedition in forwarding to erstwhile clients' new solicitors papers pursuant to instructions;

- (5) failed, alternatively failed with reasonable expedition, to reply to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (6) failed adequately to supervise the activities of the Assistant Solicitor J.A.J. Braithwaite;
- (7) dishonestly, alternatively improperly, utilised clients' monies for the benefit of himself and/or other clients not entitled thereto.
- (8) acted in breach of the Solicitors Accounts Rules 1991 in that contrary to Rules 7 and 8 of the said Accounts Rules, he drew from Clients Account money other than so permitted, and utilised the same for his own, alternatively for the benefit of other clients not entitled thereto ;
- (9) acted in breach of Rule 11 of the Solicitors Accounts Rules in that entries made therein were false, alternatively improper;
- (10) failed, alternatively failed with reasonable expedition, to settle Counsels' fees incurred in his practice as a solicitor;
- (11) failed alternatively failed with reasonable expedition to respond to correspondence and enquiry addressed to him by Counsel's Clerk, the Chairman of the Bar and the Solicitors Complaints Bureau;
- (12) by virtue of each of the aforementioned had been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 11th July 1995 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdale & Janes of 16 Warrior Square, Southend on Sea, Essex appeared for the applicant and the respondent was represented by Mr. Gibson of Counsel instructed by Messrs. Kingsley Napley solicitors of Knights Quarter, 14 St. John's Lane, London, EC1M 4AJ.

The evidence before the Tribunal included the admissions of all of the facts by the respondent, although he made it plain that he denied that he had been guilty of dishonesty.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Brian Roger Lizzimore of Chorley Wood, Hertfordshire (formerly of 65a Seven Sisters Road, Holloway, London ) be STRUCK OFF the Roll of Solicitors, and they further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,418.86p inclusive.

The facts are set out in paragraphs 1 to 23 hereunder.

1. The respondent, aged 43 years, was admitted as a solicitor in 1975 and at the material times practised as a sole practitioner under the style of Lizzimore Braithwaites at 65a Seven Sisters Road, Holloway, London. He employed an assistant solicitor, Mr. J.A.J. Braithwaite.
2. On the 7th July 1992, Messrs. Anthony Gold Lerman Muirhead, solicitors of Streatham, complained to the Solicitors Complaints Bureau (the Bureau) about the

firm of Votsis and Protopapis of Harringey. Mr Braithwaite (the aforementioned Assistant solicitor with the respondent) had given an undertaking by letter on the 2nd November 1988 to obtain payment of the complainant firm's costs in a matter in which a client had instructed Mr. Braithwaite's firm in succession to that of the complainant's firm. When the Bureau investigated the matter, it found that Mr. Braithwaite had become an assistant solicitor with the respondent. In correspondence the Bureau required the observation of the undertaking and wrote letters in November and December 1992 and January 1993 for before response was made. The personal injury file had been passed to another firm of solicitors. Mr. Braithwaite's file had been vandalised. The costs had then been paid.

3. On the 28th April the Bureau wrote again saying that although the earlier position had been noted, response should have been made earlier. A further letter was written on the 13th May requiring response within five days. A further letter was sent on the 7th June, 21st June and the 7th October, the last being addressed to the respondent and requiring a response. On the 29th October Mr. Braithwaite wrote to say that the case had been concluded, that he had been in contact with the new firm of solicitors instructed to agree costs and would contact the complainant firm. On the 9th November, the Bureau wrote to the respondent asking that within seven days progress be reported but there had been no response.
4. On the 3rd November 1992, the Chief Executive of the Council to the Bar wrote to the Bureau with regard to outstanding Counsels fees. The initial correspondence again was with Mr. Braithwaite who had been the proprietor of the firm subsequently run by the respondent. Three Counsel were owed fees from as far back as 1990. It appeared that Mr. Braithwaite had written to the client asking that he put in funds otherwise if that was unsuccessful, alternative arrangements would have to be made to pay Counsel. Further correspondence ensued, and the respondent himself wrote to the Bar Council in November 1992, explaining that he had acquired the firm of Braithwaites following an intervention by the Law Society in October 1991. He needed to check the position in relation to the outstanding fee notes. He indicated that he would pay some outstanding fees, but required more time to pay the larger amounts. Further time was requested. The Bar Council responded that Counsel was prepared to wait until mid-January 1992 to be paid. Payment was not however made, Counsel wrote to the respondent on the 20th January 1993 and in the absence of any response the matter was referred to the Bureau.
5. At the end of April 1993, the respondent wrote to the Law Society saying that endeavour was being made to obtain fees from the clients concerned. On the 17th May the Bureau wrote to the respondent pointing out that the sum of £9,387.50 remained outstanding. On the 1st July the fees remained unpaid, and the respondent was reminded of the requirement personally to pay Counsel. On the 7th October a further letter was sent to the respondent saying that if the fees were not paid in full within 14 days, then the matter would be taken further. Nothing further was heard, and in March 1994 the respondent was advised that, failing comment within 14 days of the letter sent, the matter would be considered by the Adjudication and Appeals Committee. No payment or any representation was made by the respondent, and on the 20th April 1994, the relevant committee of the Bureau decided to refer the conduct of the respondent, relating to his liability for Counsels' fees to the Tribunal, and to rebuke Mr. Braithwaite for his non-settlement of Counsels' fees, and to require settlement at the rate of £50.00 per month.

6. On the 1st December 1992, Messrs. Talfourd Co. solicitors, complained about the respondent. They acted for Mrs. B who had accepted instructions to provide lodgings for a client of the respondent's firm who was travelling from Spain as witness in a trial. The respondent's firm had undertaken to be responsible for her reasonable fees. An invoice in that respect, in the sum of £270.00 had been outstanding since February 1992, and there had been no response to letters and telephone calls. The undertaking was oral. The Bureau wrote to the respondent about the matter on the 4th November 1993. A further letter was sent on the 14th January 1994. There had been no response. In May Messrs. Talfourds confirmed that no money had been received.
7. On the 14th June 1993, Mrs. A wrote to the Law Society to complain about the respondent, who acted in the estate of her late father following instructions in April 1992. She had written to the respondent to express her dissatisfaction with the service he provided, but without satisfaction. In October 1993, the Bureau wrote to ascertain the position, but no reply was received. The Bureau wrote again on the 14th December asking for explanation within 14 days. Another letter was sent in January 1994, indicating that the matter would be regarded as professional misconduct if there was no response. In May 1994, a letter was sent from the respondent's firm to Mrs. A, however, on the 23rd June a further letter was sent by the Bureau to the respondent, requiring matters to be dealt with in seven days. On the 18th July the respondent's firm replied to say that they hoped a Grant of Probate could be applied for in early August, which was some two years after initial instructions had been given. No explanation for the delay had been advanced.
8. On the 18th June 1993, Mr. B complained about the respondent's firm. Initially his contact had been with Mr. Braithwaite. His firm had been instructed to deal with a claim against Customs and Excise, and in relation to an accident. No satisfactory response to enquiry had been made.
9. Messrs. Michael Lynn & Co., solicitors who had been instructed in place of the respondent's firm, complained to the Bureau by letter on the 14th October 1993. They had sent an authority for the delivery to them of the file, but it had not been handed over. Mr. Braithwaite responded to the Bureau, apologising for the delay, explaining the circumstance of the instruction and indicating that he was working out a bill of costs. In November 1993, Mr. B told the Bureau it had not been possible to get satisfactory explanation from the respondent's firm, and confirmed that his new solicitors had not received the file of papers. Despite a number of letters written by the Bureau, no satisfactory response was received, and disciplinary action was resolved upon against the respondent in April 1994, and it was decided to appoint an agent to collect the papers. On the 21st June 1994 the firm received some papers, but said that this did not comprise a complete file. In October Michael Lynn & Co. reiterated their complaint. The client had been given misleading and incorrect information, the matter had not been progressed at all, there were no papers relating to the Customs and Excise case, no letters had been written to the client concerning his affairs, and no bill had been submitted.
10. In August 1993, Barclays Bank Plc complained in respect of the respondent's firm. The Charge Certificate relating to premises at Palmers Green had been sent to the respondent, so that the property that had been held in the joint name of husband and wife, should be changed to the joint names of the wife and her father. Despite an indication by the respondent's firm that the papers would be available only a short time

after instruction, and despite several letters and telephone calls, the document had not been received by the bank some eleven months later.

11. The Bureau wrote to the respondent on the 5th November 1993, requesting response within seven days. A further letter was sent on the 14th December and another on the 26th January. There had been no response.
12. On the 7th January 1994, Woolwich Building Society complained to the Bureau about the respondent in respect of their borrower Mr. T, and a property at Totteridge, London. The respondent had acted in connection with the Society's mortgage which had been completed in June 1991, but despite many letters, the title deeds to the property had not been received. There was a breach of undertaking in that respect and clear delay.
13. On the 1st February 1994, the Bureau wrote to the respondent requiring explanation within 14 days. In June, solicitors acting on behalf of Woolwich Building Society, confirmed that they had received instructions to seek an Order for delivery up of papers and enclosing a copy of the originating summons. On the 15th June 1994, Mr. Braithwaite replied on behalf of the respondent, sending the relevant file of papers to the Bureau together with the papers relating to Mr. B (referred to in paragraph 9 above). The matter had not been completed.
14. On the 19th March 1994, Mr. Braithwaite wrote again to the Bureau in relation to the various complaints that were outstanding. That was the first substantive response received in relation to the complaints. (a) In that letter he said that in relation to the complaint of Mrs. T, it was not considered that an undertaking had been given, but arrangements had been made to pay. (b) Liability to Counsel for outstanding fees was accepted, <sup>of late saying that</sup> there had been financial pressures. (c) In relation to the complaint of Mr. B, the papers could not be found. (d) In respect of Mrs. A's complaint, delay had occurred because there had been overseas property. The firm had sufficient information to clear up the administration without undue delay. (e) With regard to the Barclays Bank complaint, the undertaking was acknowledged and would be complied with as soon as possible. (f) With regard to Woolwich Building Society complaint, registration would be attended to.
15. The respondent's position had been that the matters in which complaints had arisen, related to work undertaken by Mr. Braithwaite, and the respondent had left him to deal with the matters. That submission had been rejected by the Adjudication and Appeals Committee.
16. Following notice duly given, the Investigation Accountant of the Law Society inspected the respondent's books of account, beginning on the 13th March 1995. His report was dated the 16th March. The respondent explained that he practised alone as Lizzimore & Co. until October 1991, when he took over the practice of Mr. Braithwaite, since when he practised as Lizzimore Braithwaite. Lizzimore Braithwaite conducted a general practice assisted by a staff of twelve including two assistant solicitors. Details of the firm's bank accounts were given, and it was noted that as of the 7th March 1995, the account designated "client's premium account" showed a debit of £28.39.
17. The books were not in compliance with the Solicitors' Accounts Rules as they contained numerous false entries, which the Investigation Accountant said were

apparently made at the instigation of the respondent. The respondent produced to the Investigation Accountant a reconciliation that the respondent said had been produced by his reporting accountants, which showed a shortage of £294,676.47 on client bank account at 14th March 1995.

18. In the circumstances the Investigation Accountant considered it impractical to attempt to compute the respondent's total liability to clients, but from documents available, he was able to find that a minimum liability of £107,458.48 existed in respect of four clients alone.
19. Owing to the lack of proper book-keeping, and the respondent's unwillingness to assist the enquiry, the Investigation Accountant said it was not possible to determine the exact cause of the minimum cash shortage. However, the Investigation Accountant was able to set out a number of contributory matters, in particular there were numerous entries in the client account where there appeared to be no connection at all to the affairs of that particular client. Sums had been received and substantial payments made to firms and organisations, apparently unconnected with the affairs of the client upon whom the ledger the entries had been rendered.
20. On the 31st October 1994, the Chief Executive of the General Council of the Bar wrote to the Bureau in relation to the respondent. Two sets of Counsels' fees were outstanding in connection with the same case. The sums outstanding were respectively £293.75 and £411.25. A number of letters had been addressed by Counsels' Clerk to the respondent, and the Vice Chairman of the Bar had written to him on the 14th July 1994. The Chief Executive had written to him on the 15th July and 13th September, without response. The Bureau wrote on the 16th November 1994, and again on the 19th December, and yet again on the 27th February. No response and no payment had been made.



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

21. There was no doubt that the respondent was responsible for the number of matters in respect of which complaint had been made, which had ostensibly been handled by Mr. Braithwaite. The Tribunal was invited to take the view that the failure on the part of the respondent to supervise the activities of his assistant solicitor was a further area of professional misconduct.
22. With regard to the deficiencies on client account, the respondent did not admit dishonesty. In the view of the Investigation Accountant, certain accounting entries were either false or improper. A large minimum cash shortage had been identified. It was the applicant's submission that the respondent had been dishonest. If the Tribunal considered that the respondent had not been dishonest, then they were invited to consider a report in "The Times" of the judgement on the 26th June 1995, in Re A Solicitor (No F2700 1995), in which it was decided that the word "dishonesty", in relation to a solicitor, and paragraph 1(1)(a) Part 1 of Schedule 1 to the Solicitors Act 1974, was wide enough to cover the making of fictitious entries in his records, although causing no financial loss to anyone. Mr Justice Blackburn had said that he could not accept a narrow interpretation of the word "dishonesty" in the aforementioned paragraph: it could not in that context be limited to stealing, or the occasioning of financial harm, and had to be wide enough to cover the making of false entries in a solicitor's records, for example, so as to cover the fact that clients' accounts, which ought not to have been overdrawn, had in fact been. Although the case had dealt with an appeal against a decision by the Law Society to intervene in a

solicitor's practice, it was felt that it was a proper principle to be recognised by the Tribunal.

23. The applicant was able to tell the Tribunal that claims had been made upon the Law Society's Compensation Fund, and payments totalling £43,698.45 had been made at the date of the hearing, and there were pending claims in the sum of £446,542.31. No recoveries had been made as at the date of the hearing.

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

24. The respondent admitted the facts, but submitted that they did not lead inexorably to a finding of dishonesty on the part of the respondent. The finding of dishonesty against a professional man was a most serious matter.
25.  The respondent would not have appeared before the Disciplinary Tribunal if he had not gone in with Mr. Braithwaite. The respondent might we considered not<sup>to</sup> have given an appropriate degree of thought to what he was doing, but he had been placed in a position where he had to make a quick decision. There were a number of attractions in the purchase of Mr. Braithwaite's former practice. The respondent had been told that there was a shortfall on client account, which at the time he understood could have been sorted out, but there was insufficient time for an audit to be made.
26. The decision to take over Mr. Braithwaite's practice had proved disastrous for the respondent. It had been a case of "marry in haste - repent at leisure". In addition to the problems taken on, there had been further problems with a Legal Executive, also taken on by the respondent.
27.  At the time, the respondent already shouldered the substantial administrative burden borne by a sole practitioner, and things became too much for him. Matters which cried out for action were met with inaction. In short there had been an administrative shambles, which the respondent had come to recognise. Unfortunately the respondent had begun the ill-fated cycle of making payment of certain clients' disbursements by using money in client account that did not belong to the clients concerned. The respondent readily accepted that that was seriously wrong, but maintain<sup>ed that</sup> it was not dishonest.
28. In deciding whether or not the respondent had been dishonest, the Tribunal was invited to take account of the fact that the respondent had achieved thirteen years of sound and honest practice. There had been no evidence in the respondent's lifestyle that might point to his dishonesty. For example, he did not enjoy a lavish lifestyle - other people's money had not been used for example, to fund an addiction.
29. The respondent had made a pathetic but optimistic attempt to keep his head above water: he had tried to make sure that no-one would lose in the long term.
30. The Compensation Fund figures placed before the Tribunal by the applicant were not admitted.
31. The respondent had made a wholesale admission on all other matters, save that he had been dishonest.
32. The respondent accepted that he had failed to supervise Mr. Braithwaite, and the respondent had known nothing about those matters of complaint. When the

respondent had become aware of them, he had required Mr. Braithwaite to deal with them. The respondent had not checked that Mr. Braithwaite had done as he was told.


33. The difficulties which the respondent had taken on with Mr. Braithwaite's former practice did not reveal their full extent until some twelve months later.

The Tribunal FOUND all of the allegations to have been substantiated, and did find that the respondent had acted dishonestly. Indeed, with regard to the breaches of the Accounts Rules found to have been substantiated, the respondent's attitude appeared to have been that if payment of a disbursement in a client matter fell due, then he simply reached for the nearest client account with a credit balance. The remarks of Mr. Justice Blackburn placed before the Tribunal by the applicant were helpful. It was clear that "dishonesty" was to be given a wide interpretation. And there was no doubt in the minds of the members of the Tribunal that the utilisation of clients' money for the purposes of clients not entitled thereto could, and in this case did, amount to dishonesty. It had to be said that the respondent acted with extraordinary incompetence in taking on another firm without first obtaining a full and satisfactory audit. If the Law Society had intervened in that practice, the respondent was on clear notice that there was every likelihood that all was not well. This was a bad case: substantial claims having been made upon the Law Society's Compensation Fund. The Tribunal considered it right that the respondent be STRUCK OFF the Roll of Solicitors, and that he pay the costs of and incidental to the application and enquiry.

DATED this 9th day of October 1995

on behalf of the Tribunal

D.J. Leverton  
Chairman




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10th  
October 95