

IN THE MATTER OF ROBERT JOHN BRADFIELD GILES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.G. Gibson (in the Chair)
Mr. K.I.B. Yeaman
Mr. D.E. Marlow

Date Of Hearing: 14th December 1995

FINDINGS

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

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 23rd January 1995 that Robert John Bradfield Giles, solicitor, of Kingston Langley, Chippenham, Wiltshire might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

At the opening of the hearing the applicant told the Tribunal that he sought to amend one of his allegations and to withdraw the allegations contained in a supplementary statement dated the 3rd April 1995 which had been filed with the Tribunal and served upon the respondent. The respondent agreed and the Tribunal consented to that course of action. The allegations set out below are set out in the agreed amended form.

The allegations were that the respondent had;

- (a) dishonestly alternatively improperly utilised clients' monies for his own purposes;

- (b) acted in breach of the Solicitors Accounts Rules 1991 in the following manner;
 - (i) drew from clients account monies other than as permitted by Rule 7 and 8 of the said Rules and utilised the monies improperly so drawn for his own alternatively for the benefit of other clients not entitled thereto.
 - (ii) contrary to the provisions of Rule 3 of the said Solicitors Accounts Rules, failed to pay into clients account clients' monies received in his practice.
 - (iii) failed to keep his books of account properly written up as required by Rule 11 of the said Rules.
- (c) failed to deliver an Accountant's Report for any period of practice after the 31st July 1993.
- (d) by virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 14th December 1995 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdales & Janes, solicitors, of 16 Warrior Square, Southend-on-Sea, Essex appeared for the applicant and the respondent was represented by Mr. Ian McCulloch of Counsel, assisted by Sibel Dedezade, instructed by the respondent.

The evidence before the Tribunal included the admissions of the respondent subject to his denial of any allegation of dishonesty, the oral evidence of the respondent and Mr. Clemo and exhibits "JRGB1 to JRBG3" inclusive.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Robert John Bradfield Giles of Kingston Langley, Chippenham, Wiltshire, solicitor, be Struck Off the Roll of Solicitors and they further Ordered him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court or agreed.

The facts are set out in paragraphs 1 to 17 hereunder.

1. The respondent, aged 47, was admitted a solicitor in 1978 and at the material times practised as a sole practitioner under the style of Hillearys at Suite 41/41A Ludgate House, 107/111 Fleet Street, London, EC4. The firm was a long established one in which the respondent had been in partnership with his father.
2. The Law Society intervened into the respondent's practice on the 11th November 1994.
3. The Law Society's Investigation Accountant began an inspection of the respondent's books on the 25th October 1994, notice having been duly given. The Investigation Accountant who attended at the respondent's office was Mr. Clemo, and the Tribunal had before it the details of what he had found, in a report of the Chief Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) dated the 8th November

1994. Both Mr. Clemo and the respondent gave evidence as to the subject matter of that report.

4. The respondent had practised alone since July 1990 conducting a general practice assisted by a staff of nine including two assistant solicitors. He was a controlled trustee in two matters and his firm was regulated by the Law Society in the conduct of investment business subject to the condition that the firm conducted no further discrete investment business.

5. The respondent had two legal executives who had served the firm for many years and were both quite elderly. They were signatories upon the firm's bank accounts as well as the respondent. Details of the balances on the firm's bank accounts were set out in the report but it was said that the respondent's books of account were not in compliance with the Solicitors Accounts Rules as numerous transfers had been made from client to office account which had not been allocated to any account in the clients' ledger and the Investigation Accountant went on to report that there were further serious breaches of the Solicitors Account Rules.

6. Mr. Clemo did not consider it practicable to attempt to compute the respondent's total liabilities to clients. Mr. Clemo ascertained a minimum cash shortage of £23,675.95 existing on client bank account as at 30th September 1994. He described the shortage as having arisen owing to the respondent having misused clients' funds. It was the respondent's position that he could not disagree with that figure at the time it was ascertained by Mr. Clemo as he would need to carry out investigations before he was able to be more specific.

7. Mr. Clemo reported that the minimum cash shortage had been caused in the following way

(i)	payments of a personal nature from client bank account	£2,861.50
(ii)	improper transfers from client to office bank account	£13,734.78
(iii)	overpayments	£6,142.67
(iv)	clients' funds withheld from client bank account	£891.00
(v)	bank charges debited to client bank account	<u>£46.00</u>
		<u>£23,675.95</u>

8. Mr. Clemo reported that the respondent had confirmed that at the time of the inspection he was not in a position to replace the minimum cash shortage, although he had told Mr. Clemo that he expected to receive substantial sums of money representing costs both from private clients and the Legal Aid Fund which would have enabled him to rectify any shortfall there might have been.

9. The details of the payments expressed to be of a personal nature made from client bank account were as follows;

<u>1994</u>	<u>Payee</u>	
25th February	Cash - Office Wages	£45.00
15th April	C. B - Office Expenses	117.50
22nd April	C.B. - Office Expenses	400.00
11th July	Mrs JAP	1,000.00
8th August	DJF - Office Expenses	250.00
8th August	CB - Office Expenses	335.00
8th August	Mrs S	64.00
12th August	CB - Office Expenses	<u>650.00</u>
		<u>£2,861.50</u>

10. It was reported by the Investigation Accountant that the respondent had admitted that payments had been made for his own benefit and that the withdrawals were all improper as no funds were held in client bank account from which they could properly have been made. In fact the cheques had been drawn by CB, the respondent's elderly cashier. The stubs of the cheques had been properly written up in the cheque book and there had been no attempt to cover up what the payments had been for.
11. The largest of the sums of money paid from client bank account was in respect of Mrs J A P. The respondent said that the sum of £1,000 represented a part repayment of money previously loaned to him in 1993. He said he had the authority from the client to utilise the funds held in client bank account for his own purposes but he did not identify the client concerned. In evidence the respondent told the Tribunal that he was entitled to transfer monies from client account in respect of an estate of which his firm had conduct of the administration. He had not wished to transfer the money to office account where it might have been sequestrated by the bank and so he made a direct payment from client account to Mrs JAP.
12. With regard to the improper transfers, between the 4th August 1993 and 30th August 1994, twenty four transfers varying in amount between £50 and £2,437.07 and totalling £13,734.78 had been made from client to office bank account but had not been allocated to any individual account in the clients' ledger. The respondent explained that he had advised his cashier to make transfers relating to specific clients but he believed that his cashier had failed to record the detail in the cash book. After the inspection when the respondent had an opportunity to investigate the matter further, a number of such transfers were properly allocated.
13. Overpayments varying in amount between £0.01 and £3,671.08 and totalling £6,142.67 had arisen between the 3rd August 1993 and the 8th August 1994 on account of twelve clients. The largest sum arose in connection with Doctor F for whom the respondent acted in connection with the sale of furniture. The movements on that client's account between 29th March 1994 and 27th May 1994 meant that on the latter date a debit balance of £3,671.08 was revealed and that remained the position until the 30th September 1994. The respondent attributed that shortage to an error made by his cashier who had confused that and other ledger accounts relating to Doctor F's daughter for conveyancing and various litigation matters. Mr. Clemo noted that no credit balances remained on any of those related accounts at the 30th September 1994.

14. Mr. S had asked the respondent to hold £1,000 in cash on his behalf. There was no specific transaction involved. On the 21st February 1994 an account in the client ledger in the name of Mr. S was charged with a client account payment of £1,000 when no funds stood to his credit thereby giving rise to a debit balance of that amount which remained the position at the 30th September 1994.
15. The respondent said in evidence that he had held the cash received from the client and having considered whether or not there might be any impropriety in his so doing, placed it in a safe. He considered that he had authority to use that money, apparently without the imposition of any restriction. He had in fact used the cash passed to him by Mr. S to pay staff wages and it was when returning the money to Mr.S by way of cheque that the shortfall on client account arose.
16. It had been alleged that certain sums were withheld from client bank account totalling £891.00. The Investigation Accountant reported that on the 22nd October 1993 and the 10th November 1993 amounts received from clients of £750.00 and £141.00 respectively were improperly paid into the office bank account. The respondent agreed that he had received £141.00 in cash from a client he believed he might have retained and spent that money and no appropriate credit to the client's ledger had been made. There was some disparity of view as to the sum of £750.00. It was suggested by the Investigation Accountant that the money related to a Mr. R, a businessman and client. The respondent believed that not to be the case because the monies had been paid in error into office account after an earlier cheque had not been met. Mr.R was a successful businessman, and there would have been no question of his cheque not being good. There was no reliable evidence as to the £750.00 before the Tribunal and they were not able to reach any conclusion in relation thereto.
17. In his report Mr. Clemo went on to report that the respondent had not delivered an accountant's report covering a period later than the 31st July 1993, however the respondent placed before the Tribunal a letter dated the 6th September 1995 from the Bureau which operated as a waiver. Because of the waiver and the fact that the respondent had been rebuked by the Bureau, the Tribunal accepted the proposition placed before it, and agreed by both parties, that there had been only a failure to file an accountant's report in respect of an earlier accounting period and not in respect of the whole period since 31st July 1993.

The Submissions of the Applicant

18. It was accepted that Mr. Justice Carnwath hearing the respondent's appeal on the decision of the Law Society to intervene into his practice, his judgement being handed down on the 12th April 1995, had not made a finding of dishonesty against the respondent, however, he had made it plain that he did not consider it was for him to make that finding and he specifically said that it was for another Tribunal to consider such a matter. In the light of that judgement the Tribunal still had a discretion to decide whether or not the respondent had acted dishonestly.
19. Clearly it was a matter for the Tribunal to decide in the light of the facts before them whether or not the respondent had been dishonest. Apart from the issue of dishonesty

the respondent had made admission of the allegations. The respondent had with knowledge that what he had done was not right used client's money to run his office, and that amounted to using clients' money for his own benefit. To use client's money to meet office expenses did amount to dishonesty.

20. With regard to the question of the improper transfers, it was accepted that that might be something of a grey area and transfers could have been made inadvertently. If however the transfers had been made deliberately which was the de facto position, the respondent had to demonstrate that he had delivered bills. That had not been done by the respondent.
21. It might have been that the respondent's cashier had failed in his duty but the respondent was solely responsible for the state of his books of account and had apparently not taken swift and definite steps to demonstrate that the transfers had been properly made.
22. The respondent appeared to have received the sum of £141.00 (being clients' money) which he had put in his pocket and used as his own money. The Tribunal was notified that claims had been made upon the Law Society's Compensation Fund, but it did appear that there were sufficient sums in the respondent's former client and office accounts to meet the great majority of such claims although it appeared that there might be a relatively small shortfall when all matters had been concluded.

The Submissions of the Respondent

23. It was said on behalf of the respondent that he was not a dishonest man. He was a competent solicitor.
24. The problems which had arisen on the accounts side were largely due to the elderly cashier's incompetence. As time passed by the respondent had begun to realise that his instructions were not being carried out. He began to keep a book in which he wrote down the instructions which he had given to his staff in case he had not remembered.
25. Where payments had been made out of client account, they had been instigated by the cashier but details of the nature of the payment had been written either on the cheque stub or on the back of the cheque itself. It was extremely unlikely that any dishonesty had been involved because no attempt had been made to conceal what had happened.
26. In connection with some of the transfers which were described as improper, there were a number of cases where bills had been drawn and delivered. In some cases bills had not been delivered to the client, and the respondent readily admitted that to be the position.
27. The books were written up periodically but not on a day to day basis. The respondent accepted responsibility as a sole practitioner from the outset for any bookkeeping error or breaches of the Solicitors Accounts Rules. He believed that upon receiving monies from the Legal Aid Fund and certain private client costs he would be able to rectify any shortage which in due course was proved to exist. The respondent's books had been muddled and indeed were at one point described as "chaotic".

28. The Tribunal was invited to take the view that dishonesty would only arise if the respondent had done certain acts;
 - (i) knowing that what he was doing was wrong;
 - (ii) doing it anyway;
 - (iii) at a time when he had no prospect of repayment.
29. The Tribunal was further invited to take the view that it was likely that there would have been some attempt at concealment if the respondent had acted dishonestly, however all of the evidence enabling the Investigation Accountant to produce his report had been made available by the respondent.
30. The respondent had made honest admissions and had accepted that he had fallen short of the accounting rules imposed upon him by his own profession.
31. The respondent had not been under any particular financial pressure: no pressure from his bank, no pressure from the other side in a conveyancing transaction to pay. He had no pressing debts of a personal nature and no evidence that the viability of his firm was about to come to an end.
32. The respondent had been hindered in giving detailed assistance to the Investigation Accountant or the Tribunal by the fact that his files had been passed to the Law Society's Intervention Agent and had then been sent on to new solicitors instructed by his former clients.
33. Claims upon the Law Society's Compensation Fund had arisen in cases of which the respondent himself had not personally had conduct.
34. The Tribunal was invited to accept that the respondent's behaviour had fallen short of dishonesty. There were a number of specific matters where the respondent said he could not explain what had happened - that in itself revealed candour.
35. The respondent's Practising Certificate had been suspended following the intervention and he was faced with bankruptcy.
36. The respondent had retained two longstanding elderly employees and they in turn had stood by him. He had to cope with the unfortunate fact, by his own account, that he had employed a dishonest assistant solicitor and a management consultant who appeared also not to have been honest.
37. The Tribunal was told that the respondent was a muddled man keeping chaotic records but the last thing that he would think of was being dishonest.
38. The respondent would not again wish to be a sole practitioner, but he hoped he might practise within the profession, which had been his father's before him, in an employed capacity.

The Tribunal FOUND all of the allegations to have been substantiated. The Tribunal was deeply concerned that the respondent appeared to utilise clients' monies, in particular cash which had been passed to him, to pay office expenses. It was the view of the Tribunal that the use of such ready cash was dishonest: those monies should clearly have been paid immediately into client account. Even if there had been an instruction from the client to 'keep' the money and not to bank it, the respondent was not entitled to use the money for his own purposes which is what he did. The Tribunal have made no Finding regarding the sum of £750.00 which appeared to have been paid into office account instead of client account as there was no clear evidence before them as to what had happened or to which client that money belonged.

Although the respondent said that his cashier had made payments by cheque (including those made to cash) out of client account for office purposes and he had put a stop to the practice as soon as he discovered it, the respondent was a sole practitioner, the keeping of the books of account was entirely his sole responsibility and one which he could not delegate to a cashier. It was believed that the elderly cashier's bookkeeping methods were perhaps unusual, but the Tribunal had before it nothing that would suggest that he would not have kept perfectly proper accounts if the requirements had been properly made known to him. It seemed at best that the respondent had turned a blind eye to what was going on. A failure to take clear steps to ascertain exactly how employees are handling such a crucial part of a solicitor's practice was a great abrogation of responsibility and in itself verged upon the dishonest. An honest solicitor would pay due attention to the proper keeping of books of account, the proper handling of clients' money and compliance with the Solicitors Accounts Rules. A solicitor could not avoid his responsibility by saying that he did not know what was going on, and, as the Tribunal has already intimated, a deliberate policy of not employing checks and balances on the work of employed staff was unsatisfactory and irresponsible and if carried to an extreme could in the Tribunal's view amount to a form of dishonesty.

In the circumstances the Tribunal Order that respondent be Struck Off the Roll of Solicitors and further Order him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

DATED this 24th day of January 1996

on behalf of the Tribunal

A.G. Gibson
Chairman

