

IN THE MATTER OF GARRY MICHAEL PROCTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G B Marsh (in the Chair)
Mr. A Gaynor-Smith
Dame Simone Prendergast

Date Of Hearing: 6th February 1998

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 Roger Field solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 19th June 1995 that Garry Michael Procter of Chelsea, London SW10 solicitor 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.

On the 25th July 1995 a supplementary statement containing a further allegation was filed by the applicant. The allegations below are those contained in the original and supplementary statements.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances namely that he had:-

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) drawn money from a client account other than as permitted by Rule 7 of the said Rules, contrary to Rule 8 of the said Rules;

- (iii) utilised clients' money for his own purposes;
- (iv) breached Section 41 of the Solicitors Act 1974 as amended in that he employed in connection with his practice as a solicitor a person who to his knowledge was disqualified from practising as a solicitor by reason of the fact that his name had been struck off the Roll when he had not obtained written permission so to do from the Law Society.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 6th February 1998 when Roger Field solicitor and partner in the firm of Messrs Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent was represented by Martin Jones of Counsel instructed by the respondent.

The evidence before the Tribunal included the admissions of the respondent and the oral evidence of Mr J B Quilliam and exhibits "GMP1" to "GMP3".

At the conclusion of the hearing the Tribunal ORDERED that the respondent Garry Michael Proctor of _____, Chelsea, London, SW10 _____ 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 if not agreed.

The facts are set out in paragraphs 1 to 20 hereunder:-

1. The respondent, born in 1955, was admitted a solicitor in 1979. At the material time he practised under the style of Proctors at Bonay House, Victoria Road, Ruislip, Middlesex until May 1994 when the partnership was dissolved. Thereafter he carried on practice on his own account under the same style and at the same address before moving to other premises at Pembroke House, 5/9 Pembroke Road, Ruislip, Middlesex and 49, Upper Brook Street, London W1. The Law Society intervened into his practice in August 1994.
2. Upon due notice to the respondent the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) carried out inspections of the respondent's books of account. Copies of the Investigation Accountant's Reports dated 16th June 1994, 16th August 1994 and the 11th October 1994 were before the Tribunal.
3. The first report revealed that the respondent's books of account were not in compliance with the Solicitor's Accounts Rules. Mr Ali, the respondent's office manager, said that the firm's computer had suffered a fatal crash in April 1994 with a total loss of all client accounting information to the 31st March 1994. Client information from the 1st April 1994 was available but no reconciliation had been performed since the crash. Owing to the loss of the accounting records caused by the crash it was not possible to determine the respondent's total liabilities to clients. It was, however, established that a minimum liability of £758,245.67p existed at the 26th May 1994. The cash available on that date was £475,679.06p resulting in a minimum cash shortage of £282,566.61p.

4. The respondent said that the above was not the true position as his books contained errors and omissions. He had instructed his accountants to review his accounting records with a view to determining the correct position and he said he would notify the Bureau when this had been done.
5. In the second report dated the 16th August 1994 (after the respondent had moved his Ruislip office and opened another office in London) it was revealed that one set of books was maintained in respect of both offices and it was not in compliance with the Solicitors Accounts Rules. The books had been written up-to-date but they had not been reconciled later than 31st March 1993. Liabilities to clients shown by the books when compared with the cash available revealed a cash shortage of £1,167,491.11. The Investigation Accountant had not been able to determine the exact cause of the cash shortage but in the main it was contributed to by over one hundred debit balances totalling £1,174,478.41 and shown to be extant in the records as at the 30th June 1994.
6. The respondent on that occasion contended that the true position was not reflected because the books contained errors and omissions.
7. The Investigation Accountant made a general review of the records and this showed that obvious offsets against credit balances of £441,268.14 were available and a detailed review of five larger remaining debit balances showed adjustments and offsets amounting to a further £128,678.64. The amended position as at the 30th June 1994 was as follows:-

Amended liabilities to clients shown by the books	£1,640,474.02
Cash available	<u>£1,053,846.69</u>
Amended Cash Shortage shown by the books	£ <u>586,627.33</u>

8. The respondent said that even the apparent amended shortage was due to further unidentified errors in his books and that he had instructed his accountants to review his accounting records with a view to determining the correct position and that he would notify the Bureau when this had been done.
9. The third Accountant's Report dated 11th October 1994 followed the Law Society's intervention into the respondent's practices.
10. A list of liabilities as at the 28th September 1994 was produced for inspection and totalled £154,525.78 after adjustment. The items were in agreement with the balances in the clients' ledger and a comparison of their total with cash held on client bank and building society accounts, after adjustment for outstanding lodgements revealed the following position:-

Liabilities to clients per listing	£154,525.78
Cash available	
Funds held by the intervening agent	£37,146.89
Funds at the Leeds Permanent Building Society	<u>£46,809.46</u>
	<u>£83,956.35</u>
Cash shortage	<u>£70,569.43</u>

11. The respondent had agreed the existence of the cash shortage and told the Investigation Accountant that recoveries from clients totalling £2,326.50 had been paid to the intervening agent leaving an outstanding shortage of £68,242.93. He said he was not then in a position to rectify the remaining cash shortage, but would notify the Bureau if and when he had done so.

12. The cash shortage had arisen in the following way:-

(i)	unallocated improper transfers to office bank account	£35,518.42
(ii)	overpayments	£29,211.85
(iii)	improper transfers to office bank account	£4,216.13
(iv)	book difference (shortage)	<u>£1,623.03</u>
		<u>£70,569.43</u>

13. Two ledger accounts entitled "cost transfers general" and "costs transfers" showed debit balances of £28,785.40 and £6,733.02 respectively at the 28th September 1994. The debit balances were caused in the main by round sum transfers from client to office bank account said to be on account of accrued costs but not allocated to any individual account in the client ledger:-

30th June 1994	£4,600.00
30th June 1994	£1,900.00
8th July 1994	£1,300.00
2nd August 1994	£15,000.00
2nd August 1994	£6,200.00
11th August 1994	<u>£4,000.00</u>
	<u>£33,000.00</u>

14. The respondent explained that he took costs on account when his bookkeeper said that they were available. He agreed that it was obvious that he had taken £35,518.42 more from client to office bank account than there were funds properly available. He said that at the time of each transfer he thought he had sufficient accrued costs available to cover the amounts transferred.

15. In the period from 22nd October 1993 to the 19th September 1994 overpayments varying in amounts from £0.12p to £4,114.26 and totalling £29,211.85 had arisen on account of forty eight clients.

16. Two separate round sum payments of £3,000.00 on 10th June and £13,000.00 on the 17th June 1994 had been made at the request of the respondent's former partner in respect of client matters already taken over by her.

17. In the period from the 21st June 1994 to the 16th September 1994 improper transfers varying in amount from £17.44 to £803.49 and totalling £4,216.13 had been made from client to office bank account in respect of seventeen clients when insufficient funds were held on their behalf. The respondent attributed the improper transfers and resultant shortage of £4,216.13 at the inspection date to error.

18. Christopher John Cudworth Summers (Mr Summers) had been employed by the respondent in his firm to perform conveyancing services for clients of the respondent. Mr Summers's name had been struck off the Roll of Solicitors following his appearance before the Solicitors Disciplinary Tribunal on the 18th November 1993. The respondent did not have the Law Society's written permission to employ or remunerate Mr Summers.
19. When approached by the Law Society to deal with this matter the respondent acknowledged in his letter of the 26th September 1994 that Mr Summers had worked for him from time to time but he denied that Mr Summers had been employed by him. The arrangement had ceased. Mr Summers himself had indicated that the respondent had undertaken to obtain consent from the Law Society and he believed the respondent had in fact secured the relevant consent of the Law Society. Mr Summers indicated his belief that consent had been obtained by the respondent and Mr Summers did not hold himself out as a solicitor or licensed conveyancer. He simply gave assistance to the respondent at material times.
20. During the course of the hearing it was initially indicated on behalf of the respondent that he had been aware of the fact that Mr Summers had faced a criminal conviction but he had not been aware of the fact that a striking off order had been made in respect of him by the Tribunal. A letter apparently by way of testimonial in support of Mr Summers addressed to the Tribunal by the respondent which had been before the Tribunal at the time when they made the striking off order was produced. It was suggested that this was a clear indication that the respondent had been aware of the disciplinary proceedings. There was suggestion made by the respondent that the letter was not what it appeared to be on its face. Indeed it was suggested that the letter was a forgery. After considering the matter further the respondent did however through his representative confirm that he had "known in his mind" that Mr Summers had been struck off.

The Submissions of the Applicant

21. The respondent had admitted all of the allegations and all of the facts.
22. The Tribunal was aware of the reasons for the delay in bringing the matter before them in a substantive hearing. This had been to a large extent due to the unfortunate history of illness suffered by the respondent to which his own representative would refer more fully.
23. The respondent had been in partnership in Ruislip. In May 1994 the partnership had been dissolved and he continued to practice as a sole practitioner from the same address. He then moved to another address in Ruislip with a second office in London. He continued to practice as a sole principle with two addresses until the Law Society's intervention.
24. The matters revealed by the three Investigation Accountants' reports spoke for themselves.

25. The respondent had operated in a way which was contrary to the Solicitors Accounts Rules that there should be a clear distinction between client monies and a solicitor's own money. The Solicitors Accounts Rules were very clear and movement of monies between client account and office account could be made only in prescribed circumstances. A number of incorrect transfers had been made and perhaps the most serious of those had been the round sum transfers. The applicant did not suggest that the respondent had acted in any way dishonestly in the sense that he wished to line his own pockets with monies belonging to his clients. However he had clearly miscalculated sums available and large sums had been involved. That was an extremely serious matter which reflected badly upon the respondent and brought into question his integrity and probity which were essential for a solicitor in order that he might have proper dealings with client's monies.
26. It was clear that the respondent had employed Mr Summers at a time when that gentleman was a struck off solicitor. Section 41 of the Solicitors Act 1974 provided as follows:-
- "No solicitor shall except in accordance with a written permission granted under this Section employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact (a) his name has been struck off the Roll."

Subsection 4 of Section 41 further provided:-

"If any solicitor acts in contravention of this Section or of any conditions subject to which a permission has been granted under it the Tribunal or as the case may be the High Court shall order (a) that his name be struck off the Roll or (b) that he be suspended from practice for such a period as the Tribunal or the Court thinks fit."

27. It was the applicant's contention that the respondent knew that Mr Summers had been struck off. Indeed, he now admitted this. Accordingly he had breached the provisions of Section 41. This was clearly an important provision as members of the public had to be able to have confidence not only in solicitors themselves but also in people who were employed to work in solicitors' offices. The employment of a struck off solicitor by a solicitor's practice could only serve to damage the good reputation of the solicitors' profession if such employment was not subject to the control of the Law Society.

The Submissions of the Respondent

28. The Tribunal was invited to consider a chronology of events submitted by the respondent and a confidential psychiatric report prepared in April 1997.
29. The respondent had become a sole practitioner after serving articles with a reputable firm of solicitors, serving a period as a junior partner and thereafter taking up a partnership in two other firms. In about 1986 Mr Ali, a qualified Chartered Accountant, joined the respondent as his firm's accountant. In about 1992 Miss Sethi and Mr Slevin became equity partners in the firm. Between 1992 and 1993 the respondent had worked long and excessive hours and had also been involved in an

unhappy personal relationship. By way of example of the excessive work undertaken by the respondent it appeared that he had been a member of six duty solicitor schemes at the same time. At the time he had been drinking excessively. By September or October 1993 the respondent was having breathing difficulties and panic attacks and it was then that he sought psychiatric help. At Christmas 1993 the respondent attempted suicide and was admitted shortly thereafter to the Psychiatric Unit of a hospital for a period of about three months. Mr Ali had maintained the firm's accounts records on a computerised system but shortly after the respondent was discharged from hospital - and at a time when he had not yet fully returned to practice - his partners asked him to agree that the accounts should be transferred to manual records and they also asked him to agree to the appointment of new accountants. The respondent returned to work following calls from the accounts staff, saying that the accounts were in a mess. In May 1994 the respondent's partner Mr Slevin died. In the same month Miss Sethi resigned and another partner walked out. The partners who left took with them about two thirds of the firm's personnel and also numerous files. The first inspection of the accounts by the Law Society's Investigation Accountant took place in June 1994 in the wake of the inevitable turmoil caused by the unsatisfactory accounts, the death of a partner and the departure of other partners.

30. Following the inspection the respondent re-appointed his original accountants and employed a former Barclays' Bank manager and two employees from a firm of accountants to sort out the accounts.
31. The second inspection by the Law Society's Investigation Accountant took place in the following August and as a result of what he found the Law Society resolved to intervene in the practice in August. An inspection of the firm's books of account by the Investigation Accountant later during the month of August 1994 revealed a shortage which showed a very considerable reduction on the earlier shortages. In February 1996 the respondent was declared bankrupt.
32. Mr Summers had been struck off by the Tribunal in November 1993 which coincided with the time when the respondent began to suffer panic attacks and had sought psychiatric help. Mr Summers had begun to work for the respondent on a part-time basis engaged only in conveyancing matters at the end of May 1994.
33. The respondent continued to undergo psychiatric treatment. During the early part of 1997 the respondent's mental health deteriorated and he had suicidal thoughts. He lived in a small terraced house which had negative equity and was to be repossessed. The respondent was trying to survive on benefits and had unsuccessfully tried to gain employment. The respondent had been disabled from working continuously since he first consulted a psychiatrist in January 1995. His condition was not assisted by the outstanding pressures which included the threatened repossession of his home, bankruptcy and professional disciplinary proceedings.
34. Mr Quilliam (a consultant) who had assisted the respondent before his former partners asked him to agree to a change of accountants, told the Tribunal that the books had been computerised and in good order prior to the change over. When it was found that the books were in a very unsatisfactory state Mr Quilliam was again called in to assist. He said that he had made considerable progress in rectifying the problems and if

he had been permitted a little more time by the Investigation Accountant he believed the books could have been put in order.

35. The respondent had behaved irrationally and out of character. He hoped to return to the Solicitors' profession although he himself recognised that he would be in no position so to do for a considerable period of time. The respondent had always been a solicitor of the highest integrity and no client had made any complaint about him. The effect of the intervention into his practice and his illness had been devastating. He felt a social outcast and had suffered extreme humiliation.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated, indeed they were not contested. The Tribunal recognise that the respondent had not enjoyed sound mental health over a long period of time. The Tribunal had sympathy with the respondent for being in that unfortunate position. It appeared that his problems had arisen when he entered sole practice and had embarked upon an unhappy and stressful relationship with a lady. It seems very likely that the respondent was perhaps over optimistic about his capacity for work. He might well have laid the foundation of the unfortunate outcome by taking on more work than any person sensibly could cope with. The Tribunal had sympathy with the respondent that he had not been able to rely upon the support of his former partners. Having said all this, the respondent had fallen far below the standards required of a solicitor. The Tribunal could not ignore the fact that he had employed a former solicitor who had been struck off the Roll. The Tribunal was entirely satisfied that the respondent was fully aware of the fact that Mr Summers had been struck off the Roll. The provisions of Section 41 of the Solicitors Act 1974 require the Tribunal either to suspend an offending solicitor from practice or to strike him off the Roll. The Tribunal gave very careful thought as to which penalty was appropriate in this particular case. Taking all the facts into account, the Tribunal is of the view that the respondent has been seriously in breach of his obligations as a solicitor. Accordingly in the circumstances the Tribunal considered it right to order that the respondent be struck off the Roll of solicitors and further ordered him to pay the costs of the applicant such cost to be taxed if not agreed.

DATED this 27th day of February 1998

on behalf of the Tribunal


G B Marsh
Chairman

Findings filed with the
Law Society on the 12th
day of March 1998