

IN THE MATTER OF ROGER REES KEEDY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.H. Isaacs (in the Chair)
Mr. D.E. Fordham
Mr. G. Saunders

Date Of Hearing: 18th January 1996

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 Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 19th July 1995 that Roger Rees Keedy of Whitfield, Glossop, Derbyshire 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.

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

- (a) failed to maintain properly written books of account contrary to Rule 11 of the Solicitors Accounts Rules 1986 and 1991;
- (b) drawn monies out of a client account other than in accordance with Rule 7 Solicitors Accounts Rules 1986 and 1991 contrary to Rules 8 of the said Rules;
- (c) used clients' funds for his own purposes;

- (d) wrongfully retained monies due to the Legal Aid Board;
- (e) improperly retained money in breach of the Solicitors Accounts Rules (Legal Aid Temporary Provision) Rule 1992

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 18th January 1996 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and David Rowland Swift solicitor and partner in the firm of Messrs. Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Roger Rees Keedy of Whitfield, Glossop, Derbyshire 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 fixed in the sum of £5,071.58 inclusive.

The facts are set out in paragraphs 1 to 14 hereunder.

1. The respondent, born in 1947, was admitted a solicitor in 1979. At the material times he practised as a solicitor on his own account under the style of Roger Keedy & Co. at 15 Pennine Road, Simmondley, Glossop, Derbyshire. Upon notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the Investigation Accountant's report dated the 17th August 1993. Upon further notice a second inspection of the respondent's books of account was carried out by the Investigation Accountant of the Law Society and a copy of the second report dated the 15th May 1995 was also before the Tribunal. The Investigation Accountant's reports revealed the following position.
2. The First Report made in August 1993 stated that the respondent's books were not in compliance with the Solicitors Accounts Rules.
3. A list of liabilities to clients as the 30th June 1993 was produced for inspection. The items were in agreement with the balances in the clients' ledger and totalled £15, 8712.87 after proper adjustment. Additional liabilities existed at that date which were not shown by the books and a comparison of total liabilities with cash available after allowance for uncleared items showed the following position.

Liabilities to clients per the books	£158,712.87
Liabilities to clients not shown by the books	<u>1,713.00</u>
Total liabilities to clients	£160,425.87
Cash available	<u>145,534.36</u>
Cash shortage	<u>£14,891.51</u>

4. The Tribunal was told that the items shown as a liability to clients not shown by the books in the sum of £1,713.00 represented Legal Aid funds which had been paid into the respondent's office account when costs had been recovered, and monies paid on account of costs should have been returned to the Legal Aid Fund.
5. The cash shortage generally was made up by debit balances totalling £9, 588.01, improper payments from client bank account of £3,616.14, the beforementioned monies due to the Legal Aid Board improperly lodged in office bank account, clients improperly retained in office bank account in respect of costs recovered for their benefit of £424.00 and Legal Aid funds improperly retained in office bank account in respect of unpaid medical disbursements of £109.50. There was a book difference (a surplus) of £25.64.
6. The cash shortage had been reduced by the recovery of a total of £2, 700.62 from clients on the 6th July 1993 and the 13th July 1993 and by two transfers from office to client bank account of £2, 877.61 and £1,075.60 totalling £3,953.21 on the 15th and 21st July 1993 respectively. An amount of £3,492.47 had been reimbursed to client bank account by National Westminster Bank. At the time of the investigation the respondent told the Investigation Accountant that he was not then in a position to replace the remaining cash shortage of £4,745.21.
7. With regard to the debit balances it was reported that between September 1990 and the end of June 1993 debit balances varying in amount between £0.50 and £2,406.87 and totalling £9,588.01 had arisen on the accounts of thirty six clients.
8. Between the 30th April 1991 and 30th June 1993 twenty-three payments relating to office expenditure varying in amount between £0.34 and £1,200.00 and totalling £3,616.14 had been met from client bank account. The major part of that sum had been the result of bank errors.
9. The Investigation Accountant reported that the respondent's accountant's report for the year ending 30th April 1992 showed that cash available compared with liabilities revealed a difference of £2.06 only.
10. Following the second visit of the Law Society's Investigation Accountant when a list of liabilities to clients as at the 30th April 1995 was produced for inspection and totalled , after adjustment, £159,204.23, it was reported that the items were in agreement with the balances on the clients ledger but did not include further liabilities of £3,593.20 in respect of clients' funds improperly transferred to and retained in office bank account. A comparison of total liabilities with cash held in client bank accounts (after allowance for uncleared items) revealed the following position.

Liabilities to clients shown by the books	£159,204.23
<u>Add Liabilities not shown by the books</u>	<u>3,593.20</u>
	£162,797.43
Cash available	<u>£113,805.71</u>
Cash shortage	<u>£48,991.72</u>

11. The cash shortage was partly rectified by receipt of clients' funds totalling £641.55. At that time the respondent was unable to rectify the then outstanding shortage of £48,350.17.

12. The cash shortage arose in the following way:-

(i)	Improper transfers from client to office bank account causing debit balance totalling	£32,087.47
(ii)	Unallocated transfers from client to office bank account	11,162.95
(iii)	Clients' funds improperly retained in office bank account in respect of costs but for which no bills or written intimations of costs have been delivered	<u>3,593.20</u>
		£46,843.62
(iv)	Overpayments	2,122.90
(v)	Unallocated bank charges	<u>77.29</u>
		£49,043.81
(vi)	Book difference (surplus)	<u>(52.09)</u>
		<u>£48,991.72</u>

13. The Investigation Accountant went on to report that during the period between 1st February 1993 and 9th April 1995 seventy-seven transfers totalling £37,001.30 had been made from client account to the overdrawn office bank account in respect of forty-eight clients when insufficient funds were held on their behalf thereby giving rise to debit balances varying in amount between £0.54 and £8,919.01 on the relevant client ledger accounts. The largest debit balance had arisen when five transfers had been made from client to office account during January, March and April 1995 in respect of costs when no funds stood to the relevant client's credit. The respondent told the Investigation Accountant that each of the transfers had been made in anticipation of the receipt of funds from the client.

14. During the period 21st December 1993 to the 29th March 1995 fourteen transfers varying in amount between £158.67 and £1,900.00 and totalling £11,162.95 had been made from client to office bank account but had not been allocated to any individual account in the client ledger. At the time of the inspection the respondent indicated that he would endeavour to identify the clients concerned and make the appropriate allocations.

The Submissions of the Applicant

15. Following a visit to the respondent's offices by the Monitoring Unit, it was decided that a formal inspection of the respondent's books should be undertaken. Following the submission of a Qualified Accountant's Report, a further decision was taken to re-inspect the books. Following the second inspection by the Investigation Accountant the disciplinary proceedings were set in motion and the Law Society intervened into

the respondent's practice. The practice had however been disposed of to another firm which was authorised to take the respondent into its employment. At the time of the hearing the respondent was not employed and he was in difficult financial circumstances.

16. It was accepted that the respondent's bankers had been responsible for certain errors and the respondent had not been well served by accountants engaged by him.
17. However over a long period of time fourteen transfers had been made from client to office account the total of which was in excess of £11,000.00. Bills had not been delivered to the clients concerned and the transfers had not been allocated to individual accounts in the clients' ledger. The cash shortage of £48,991.72 which had arisen inevitably meant that the respondent had utilised clients' monies for his own benefit. In one case transfers had been made in anticipation of funds being received by the respondent's client account. The respondent had said that he had been in regular contact with his client but it was or should have been entirely apparent to him that the monies had not arrived. On each occasion there had been the opportunity to pay money back into client account and the fact that the monies had not been paid back represented a conscious and deliberate way of using other clients' money to pay costs incurred by an unconnected client. The Tribunal would have to ask itself whether such an approach by the respondent was honest.
18. It had been disclosed to the Tribunal by the respondent at an early stage in the proceedings that he had appeared before the Tribunal on an earlier occasion. It was then alleged that he had been in breach of the Solicitors Accounts Rules and on that occasion the Tribunal found that there had been genuine mistake and they were satisfied that subsequently all had been put in order. At the time the Tribunal had said it was important for a solicitor to be meticulous in his compliance with the Solicitors Accounts Rules and had been told that the respondent had learned his lesson. That clearly had not been the case.
19. A subvention grant of £8,018.58 had been made to the intervening solicitors out of the Law Society's Compensation Fund.
20. The discrepancies on client account continued over a period of several years and represented a very serious situation. The respondent's books over that period had never properly been written up to date. It was an inference likely to be drawn that the respondent was aware of the fact that he was improperly utilising client's money. That position would surely lead to a lack of confidence not only in an individual solicitor but also in the solicitors' profession.

The Submissions of the Respondent

21. The respondent accepted that the matters before the Tribunal represented a serious state of affairs. It was also accepted that the state of the respondent's accounting could be described as a shambles.

22. The respondent's practice was a small but busy one. He worked together with a secretary and devoted a great deal of time to that, not taking a holiday for over four years. The respondent maintained a caseload of 200-250 matters varying between conveyancing and litigation with varying degrees of complexity. He believed, with hindsight that he had been overworking for a number of years and that had contributed to his problems with administration and the keeping of accounts.
23. During the period from 1993 to 1995 the respondent had been subjected to considerable stress as the result of a number of pressures. Being in sole practice was a continuing strain made worse by problems with the respondent's accountants and a degree of withdrawal of support from his bankers. The respondent's wife changed the nature of her job which imposed additional pressures and both of the respondent's children had important examinations. In August 1994 the respondent's mother suffered a heart attack.
24. Before the respondent set up in practice on his own account in 1985, he was aware of the need to ensure strict compliance with the Solicitors Accounts Rules. He sought assistance from a reputable firm of accountants, a lady from that firm arranged to set up the accounting system and to maintain it. She attended at the respondent's office one day per week and took the books home to work on them. Unfortunately the service given by her deteriorated to an extent where the book-keeping was unsatisfactory and without realising this the respondent relied upon her assurances that all was well. Because the respondent never had an up to date system of accounts he had to rely upon records kept on individual files. In November 1988 the respondent became very concerned about the situation, he collected the ledgers from the lady who was supposed to be keeping them and the books recovered by him included a list of book-keeping errors of which he had not previously been aware. The respondent could not then reconcile or understand the accountant's figures and left £2,000.00 in client account believing that it would cover any possible shortfalls. Between January and March 1989 the respondent was making efforts to find a good accountant, but had found it difficult. The respondent's bank manager recommended a firm which was instructed by the respondent in April 1989. In March 1989, the respondent's bank manager telephoned to advise that a cheque presented for payment would create an overdrawn balance of approximately £1,400. The respondent had paid that sum into client account to ensure that it was not overdrawn.
25. Shortly after new accountants were instructed the Investigation Accountant of the Law Society inspected the respondent's books of account. He found that there were breaches in the Solicitors' Accounts Rules and an apparent shortage in excess of £20,000. The Investigation Accountant's Report led to disciplinary proceedings when the Tribunal took the view that the respondent was an honest man who had primarily suffered as a result of being let down by what had appeared to be highly qualified accountancy advisers.
26. The respondent believed that the new firm of accountants instructed by him in 1989 had taken effective action to deal with the unfortunate situation. The new firm of accountants remained responsible for the firm's accounts until 1992. During the first

year of their instruction they supplied a staff book-keeper, but after a time the attendance of the staff book-keeper became irregular. Because of his concern, the respondent then employed a part-time book-keeper who attended his office every week for a year. He left the respondent's employment having been offered full-time employment elsewhere. The respondent did not wish to return to his early book-keeping problems and decided to employ accountants who could provide a full accounting service including keeping the books. He instructed yet another firm in September 1992 which, although the respondent accepted full responsibility for the keeping of his accounts, turned out to be a mistake.

27. Errors had occurred which the respondent accepted had been entirely his fault, but assured the Tribunal that the errors were made innocently. They would have been corrected if the accountants had pointed them out.
28. The accountants employed in September 1992 and the book-keeper they supplied provided the respondent with a very poor quality of service. The full extent of their short-comings had become apparent only after the accounting records had been scrupulously examined by the firm taking over the respondent's practice in May 1995.
29. The respondent had, however, believed that his books were in order until there was a routine visit by the Law Society's Monitoring Unit in May 1993. The first visit of the Law Society's Investigation Accountant in July 1993 made it clear to the respondent that for a period prior to July 1993 his accountants had been failing in their duties.
30. It was obvious to the respondent that there would be a second Investigation Accountant's visit and he realised the need to take action. He took matters up with his accountants but had become increasingly exasperated. Throughout the remainder of 1993 and into 1994 the respondent continued to press the accountants. He referred the accountants to some anomalies on some of the ledgers demanding explanation. The accountants' fees had been high and although the book-keeper had begun by attending the respondent's office regularly after a relatively short period his visits had become less regular, although he insisted that all was in order.
31. By October 1994 the respondent had lost confidence in his accountants. He decided to change his accountants but required those engaged by him to get things straight before he took steps to make the change. With the benefit of hindsight he realised that he had left the unsatisfactory state of affairs for too long.
32. In April 1995 the respondent ordered and paid for a computer system with specialist software which following his own investigations he believed was best suited to the needs of a sole practitioner. In the meantime the accountants had failed to carry out any further work because there had been a dispute over the size of their fees and while the respondent was awaiting delivery of the computer system, the second visit of the Law Society's Investigation Accountant took place.
33. Throughout the whole of the period in question the respondent suffered from a lack of support from his bankers. They permitted no flexibility and although the respondent

had substantially reduced his borrowings his bank insisted on his working to very tight limits. That meant it was necessary to keep abreast of daily requirements and from time to time transfers from client account were deferred or made piecemeal to fit in with the daily requirement.

34. The respondent did not dispute the factual findings in the two Reports of the Law Society's Investigation Accountant. He had not, however, at any time acted dishonestly with regard to clients' funds. He had been dogged throughout by historical problems with the accounts.
35. In the first Report debit balances arising from overpayments occurred because the books were not up-to-date. The improper payments from client account occurred as a result of error by the respondent's bank. The bank accepted responsibility and corrected the error.
36. With regard to the Legal Aid matters, the errors arose at the conclusion of two personal injury cases in which damages and costs were recovered. In both cases the defendants' insurers sent cheques for the damages and cheques for the costs. The costs cheques were paid into office account when in each of the cases payments had been received on account from the Legal Aid Board. The "on account" payments had been overlooked.
37. The rest of the matters referred to were the consequence of errors and not any deliberate act on the respondent's part. The errors largely had arisen from the failures of the respondent's accountants and their book-keeper, although the respondent had to accept that he must shoulder the responsibility.
38. With regard to the matters revealed in the second Report of the Investigation Accountant, the respondent believed that he had corrected the errors referred to therein. The basis for his belief had been assurances received from his accountants. A dispute had arisen over the accountants' fees and they did not return to carry out further work. The respondent left £8,000 due to him in fees in client account to cover any possible shortfall. The respondent had hoped to have all his records transferred to a computerised system by the end of May 1995 when the errors would have been revealed and dealt with. Unfortunately, that had not happened. The respondent honestly thought he was in command of the situation and that all was well. He had come to recognise that he had lost control of the accounts and had failed to carry out appropriate checks in the book-keeping and carried on without the assistance of the accountants when he should not have done so. He reiterated that was not, at the time conscious of what was happening and had not behaved dishonestly.
39. With regard to the large shortfall revealed in the second Investigation Accountant's Report, the respondent had been able to deliver bills covering nearly £12,000 to regularise the position and the balance of the apparent shortfall had been met by the injection of some £37,500 by the respondent from his own resources within three working days of the conclusion of the inspection to eliminate the balance. The respondent believed that he had then put matters straight.

40. Following the disposal of his firm the respondent spent some time assisting with the transfer of his files but he did not remain with the successor firm, although the Law Society had granted permission for him to do so. He had not obtained employment elsewhere and had not practised as a solicitor since 23rd May 1995. Since the intervention, the respondent had no income and his family survived on his wife's income which was not adequate. The respondent's offices and his home were for sale. The respondent hoped he might be able to return to practice, albeit in approved employment as he did not wish to practise again as a principal.

The Tribunal FOUND all of the allegations to have been substantiated, indeed they were not contested.

On 4th October 1990, the Tribunal Found the following allegations to have been substantiated. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor on the grounds that he -

- (i) failed within the time prescribed by the Solicitors' Act 1974, Section 34(2) to deliver an Accountant's Report to the Law Society in respect of the accounting period ended 30th April 1988;
- (ii) utilised clients' money for his own purposes;
- (iii) drew money from client account other than that permitted by Rule 7 of the Rules contrary to Rule 8 thereof.

The Tribunal said that they were impressed with the excellent references placed before them on behalf of the respondent. They considered it clear that he was an honest man who had suffered as a result primarily of being let down by what had appeared to be highly qualified accountancy advisors. On the face of it a personal payment from client account was a very serious matter. The payment made by the respondent was clearly a genuine mistake. The monies had been replaced. The Tribunal said it was satisfied that the respondent had learnt a salutary lesson and had put his book-keeping and accountancy affairs in good order before the disciplinary hearing. It pointed out the importance of meticulous compliance by a solicitor with the Solicitors' Accounts Rules. The respondent was Ordered to pay a fine of £500 and the applicant's costs.

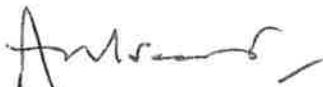
The respondent has appeared before the Tribunal on a second occasion facing serious allegations of breaches of the Solicitors' Accounts Rules and utilisation of clients' money and wrongful application of monies due to the Legal Aid Board. The respondent appears, despite his earlier experience, to have considered it satisfactory simply to hand over responsibility for book-keeping and the proper keeping of accounts and compliance with the Solicitors' Accounts Rules to firms of accountants. Although he specifically accepted that the responsibility was entirely his own, he had singularly failed to institute any proper systems for checking on a regular basis that everything was in order. A large number of errors went undetected for a very long period of time. The Tribunal was particularly concerned that transfers, apparently

representing costs, had been made from client to office account in circumstances where it appeared to the Tribunal that the respondent was fully aware that an expected receipt of monies had not materialised. That in itself and the failure to rectify the situation of which he knew or should have known was unacceptable.

The Tribunal were of the view that the respondent's apparent inability to grasp the great importance for a solicitor to keep meticulous accounts, at all times fully to comply with the Solicitors' Accounts Rules, to provide annual Accountant's Reports on time, and to deal with care and integrity with clients' monies rendered this respondent unfit to practise as a solicitor. The Tribunal considered that a Striking Off Order was appropriate in these circumstances and further Ordered that the respondent should pay the costs of and incidental to the application and enquiry.

DATED this 22nd day of February 1996

on behalf of the Tribunal


A.H. Isaacs
Chairman

Final Order with the
File Copy of the 23rd
day of February 1996