

IN THE MATTER OF DEREK JAMES BROAD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mrs. E. Stanley
Lady Bonham-Carter

Date Of Hearing: 5th 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 Roger Field, solicitor, of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 22nd August 1995 that Derek James Broad of Derek Broad & Co., King House, Ludlow Road, Redditch, B97 4EN 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 particulars, namely that he had:-

- (i) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1986 and/or Rule 11 of the Solicitors Accounts Rules 1991;
- (ii) drawn monies from a client account other than as permitted by Rule 7 of the Solicitors Accounts Rules 1986 and/or Rule 7 of the Solicitors Accounts Rules 1991, contrary to Rule 8 of the Solicitors Accounts Rules 1986 and/or Rule 8 of the Solicitors Accounts Rules 1991;

- (iii) transferred sums from and to clients' ledger accounts other than as permitted under the Solicitors Accounts Rules 1986 and/or 1991 contrary to Rule 10 of the Solicitors Accounts Rules 1986 and/or Rule 10 of the Solicitors Accounts Rules 1991;
- (iv) utilised clients' funds for the purposes of other clients;
- (v) failed to honour the terms of professional undertakings.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 5th December 1995 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 J. Harvey of counsel instructed by Messrs. Harris Cooper Taylor of Radcliffe House, Blenheim Court, Warwick Road, Solihull, West Midlands, B91 2AA.

The evidence before the Tribunal included the admission of the respondent both as to the facts and the allegations, the oral evidence of the respondent, and exhibit "DJB1", a letter addressed to "To Whom It May Concern" dated the 4th December 1995 from the respondent's accountants.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Derek James Broad of Derek Broad & Co., King House, Ludlow Road, Redditch B97 4EN, 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 £3,875.62 inclusive.

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

1. The respondent, born in 1952, was admitted a solicitor in 1977. At the material times he practised in partnership under the style of Browning & Co. at 10 Market Place, Redditch, B98 8AD at and 5c High Street, Alcester, Warwickshire. He ceased to be a partner in Browning & Co. on the 31st March 1994 and thereafter carried on practice on his own account under the style of Derek Broad & Co. at King House, Ludlow Road, Redditch.
2. Following notice duly given, the Investigation Accountant of the Solicitors Complaints Bureau (the Bureau) carried out an inspection of the books of account of Messrs. Browning & Co. A copy of the Investigation Accountant's Report dated the 2nd June 1994 was before the Tribunal.
3. That Report revealed the following matters.
4. Messrs. Browning & Co. conducted a general practice assisted by a total staff of twenty-one, including three assistant solicitors. They said they were not controlled trustees; the firm was regulated by the Law Society in the conduct of investment business. The respondent had attended an interview with the Investigation Accountant at the offices of Messrs. Browning & Co. on 23rd May 1994.

5. The Investigation Accountant's Report set out details of the firm's bank account and confirmed that the books of account complied with the Solicitors' Accounts Rules in all material respects.
6. The Investigation Accountant went on to make reference to a client account shortage which had been rectified prior to the inspection in the sum of £148,052.66. In that matter the respondent had acted for Mr. A and his business associates in connection with a large number of property transactions since about 1986. The transactions were recorded on numerous individual client accounts at the Redditch office of Messrs. Browning & Co. As at 8th February 1994 debit balances existed on five client ledger accounts which related to Mr. U. A and his associates. The smallest debit balance was £1,153.02 and the largest £78,836.92. Computer records showed that debit balances in excess of the five referred to before had been brought forward onto those five client ledger accounts from manual records on 30th September 1990.
7. The partners told the Investigation Accountant that the debit balances were caused by overpayments having been made to or on behalf of the client, but they had been unable to identify specific overpayments because of the poor state of the earlier manual records.
8. The shortage on client bank account was rectified on the 10th February 1994 following a bridging loan from the firm's bankers two personal loans to the respondent from clients (in respect of which loan agreements were produced) and two client to client book transfers. Mr U A had agreed that he and a business associate, Mr S, owed a total of £148,052.66p to the firm. Mr A put Mr S's share of the debt at between £20,000 to £30,000. As a result the partners had utilised monies standing to the credit of Mr S's client ledger account. That client had been informed but had not given his authority for the transfers.
9. The partners in Messrs. Browning & Co. told the Investigation Accountant that they had been aware of debit balances since at least early 1991 but believed that they were the result of incorrect balances having been brought forward from the old manual records which they had been unable to reconcile. They had, however, become aware of an actual cash shortage on client bank account around late 1992 to early 1993. The respondent had said that the shortage was not rectified at that time because he believed that funds would be forthcoming from the client. The partners did not have the means to rectify the shortage themselves.
10. An attempt had been made to rectify the shortage on the 29th October 1993 when the respondent had authorised book transfers totalling £148,052.66p from a client ledger account in his own name in respect of the sale of his matrimonial home to the five client ledger accounts upon which overpayments had been made. The respondent agreed that the funds transferred were part of £161,490.95p held in client bank account from the proceeds of his sale which was in fact required to redeem his mortgage. The mortgage was redeemed on the 1st November 1993 by Telegraphic transfer from client bank account. On the 12th November 1993 the respondent had authorised the reverse of all client to client book transfers thus recreating the debit balances in respect of UA. The respondent agreed that the original book transfers were all improper. The Investigation Accountant pointed out that Messrs. Browning

& Co.'s financial year end was the 31st October and the improper transfers had the effect of concealing the existence of the debit balances at that time.

11. The Investigation Accountant also went on to report the misuse of certain mortgage funds by the respondent. He had acted for Mr I A (brother of Mr U A) in the purchase of a freehold property in Solihull for £75,000 from mortgagees in possession. On the 21st June 1993, £30,000.00 was received into client bank account from National Westminster Bank Plc., for whom the firm also acted, to assist with the purchase of the property. Instructions to solicitors required them to obtain "a first legal mortgage over this property to be executed contemporaneously with the purchase." The following undertaking was signed on the 27th May 1993 - "After the property had been acquired by I A A and all necessary stamping and registration has been completed, to send the documents of title to you, and in the meantime to hold them to your order".
12. Completion was on the 25th June 1993, when the mortgage funds were received, were used in part to make a payment of £71,738.00 to the vendor's solicitors, but no first legal charge was registered at H M Land Registry on behalf of National Westminster Bank Plc. Such registration was not achieved until February 1994 when the respondent registered the Bank's interest in the property as a second charge. The respondent had told the Investigation Accountant that he had "overlooked it" and admitted to being in breach of his undertakings.
13. In August 1993, £29,965.00 was received into client bank account from National Westminster Home Loans, for whom the firm also acted, in order to assist with the purchase of the property at Solihull. A first legal charge was registered at H M Land Registry on behalf of National Westminster Home Loans. The Investigation Accountant's report set out some forty nine receipts, payments and inter client book transfers recorded on the client ledger account of Mr I A between the 19th August 1993 and the 19th April 1994, in respect of his purchase of the property in Solihull. The respondent had explained that five of those items were loans to unconnected clients and two were loans to connected clients. Part payments were for Mr U A's American Express card and one was in respect of the repayment by Mr I A of the remaining capital and interest on a £4,500.00 loan given to Mr I A by himself in January, 1993. One payment was the balance of funds required to buy a car from the firm by Mr U A. Five items represented part repayments of a loan of £15,200 previously given to Mr I A by another unconnected client of the firm, Mr B, which was secured over another property owned by Mr I A. The respondent indicated his belief that the majority of the other payments had been utilised in connection with the refurbishment of the property at Solihull. He admitted that he had not received instructions from Mr I A or from National Westminster Home Loans to make those payments or inter client book transfers. He said that he had acted solely on the instructions of Mr U A.
14. In giving evidence before the Tribunal the respondent said that Mr U A and Mr I A were brothers. The older brother, Mr U A, had become a client of Messrs Browning & Co. in about 1986. He was involved in the business of property development and had introduced the younger brother, Mr I A, to the firm. It was only the respondent who dealt with those clients. There had been a manual system of accounting and the firm had employed two cashiers. The respondent had believed that the manual ledgers

had been kept accurately but it had subsequently transpired that a cashier had fallen behind in writing up the ledgers and a catalogue of errors had been discovered, for instance entries had been made on incorrect ledgers and in some cases two ledger accounts had been opened for the same matter. The client had assisted in rewriting the ledgers to reveal the accurate position when it was ascertained that there was a shortage on client account of some £148,000.00. In effect the older of the two client brothers had been overpaid by that amount, which he himself had accepted.

The submissions of the applicant

15. At the time of the inspection of the books of account of Messrs Browning and Company, they were found to be in compliance with the Solicitors Accounts Rules. However a shortage had arisen on client account which had be rectified prior to the inspection, and had occurred on the ledger account of a client for whom the respondent had acted. Because of poor book-keeping the overpayment to the client had not been speedily identified and rectification had not been possible because of the very large sum of money involved.
16. An improper rectification had been made by the respondent when he utilised monies available following the sale of his own house apparently to make good the deficiency on client account although those monies should have been utilised to redeem his own mortgage. In dealing with the matter in that way the respondent had falsified the picture revealed in that client account which appeared to be in order for a short period of time. The respondent had agreed that the book transfers made by him had been improper and the effect of such transfers had been to conceal debit balances on client account.
17. In connection with Mr I A's purchase of a property at Solihull, mortgage funds coming into the firm had been misused. Some money had been used for loans to unconnected clients and some to connected clients. Two payments had been made to American Express and money had been utilised for the purchase of a motor car. In the submission of the applicant the entries referred to by the Investigation Accountant revealed an almost indiscriminate use of clients' monies for wholly improper purposes. The Solicitors Accounts Rules required prior written consent of the client before transfers or withdrawals could be made in respect of monies held on that client's behalf. There had been clear breaches of Rules 7,8 and 10 of the Solicitors Accounts Rules and the whole pattern which had emerged had been that of the respondent ignoring the instructions of his clients.
18. In addition the respondent had failed to honour the terms of professional undertakings given by him. That was particularly serious and in the submission of the applicant the undertakings had been breached deliberately as part of the respondent's campaign of impropriety.
19. The compliance by a solicitor with an undertaking given by him in a conveyancing transaction and during the course of receiving instructions from a lender was most important. The solicitors' profession would be bought into great disrepute if a lending institution or a client of a solicitor was unable to accept that solicitor's word.

20. The respondent had been guilty of very serious breaches of the Solicitors Accounts Rules. He had instigated a systematic series of transactions which were incompatible with the terms of instructions given to him. It was the view of the applicant that what the respondent had done involved dishonesty - it was accepted that the respondent had not sought to line his own pocket or benefit in a personal way, but nevertheless the respondent had been dishonest, particularly in that he had intended to conceal what had been the true position in his firm's books of account.

The submissions of the respondent

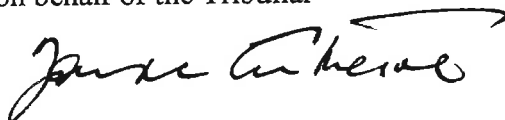
21. The respondent's difficulties had arisen in unusual circumstances. In particular there was the relationship of the respondent's clients being brothers. The elder brother had accepted that he had received a substantial overpayment. The deficiency had been made good by the respondent who had not waited until proceedings had been taken against the client. The respondent had obtained the loan to make good the deficiency of nearly sixty thousand pounds which could be repaid only if he was able to continue to work as a solicitor.
22. It was accepted that there had been serious breaches of the Solicitors Accounts Rules, but the respondent had not personally profited. He had made a misguided attempt to rectify the situation while still a partner at Messrs. Browning & Co. After leaving that firm he had not made a recovery of any capital or payment of goodwill from that firm, his former partners having retained such sums as might have been due to the respondent to make good the deficiency on client account.
23. The Tribunal was invited to adopt a lenient course. The respondent accepted that what he had done was wrong but the respondent had not profited from his actions nor had he engaged in the process with a view to profit.
24. It was accepted that the respondent could not escape responsibility as at the time the deficiency arose he was the senior partner of the firm and should have ensured that ledgers were properly kept. The respondent had started in practice on his own account and at the time of the hearing employed seven people. The new firm was modestly successful undertaking a range of "high street" work (not including criminal work) and had only shortly before the hearing moved to larger premises in a better location. The respondent needed to employ another solicitor which position had been advertised.
25. The respondent's marriage had broken down in October 1993.
26. The Tribunal's attention was drawn to exhibit "BJI 1", a letter from the respondent's accountants which confirmed that they had been appointed as reporting accountants by the partners of Messrs Browning & Co. on the 7th January 1994. During the course of their work numerous discrepancies and errors had been discovered relating to the previous year's records. The previous accounts had been given an unqualified certificate by the previous reporting accountant and the partners had relied upon that.
27. They went on to say that since leaving the partnership of Messrs Browning & Co. the respondent had been engaged as a sole practitioner in Redditch. They had acted on his behalf. The internal reconciliations for the clients' accounts had been carried out

correctly and the accountants had independently verified their accuracy and confirmed that current transactions were being properly and timorously recorded and reconciled.

The Tribunal FOUND all of the allegations to have been substantiated, indeed they were not contested. There had been serious breaches of the Solicitors Accounts Rules which the respondent accepted and agreed were his own responsibility. The respondent's extraordinary attempt to rectify the position by utilising monies realised upon the sale of his own house which were available only to redeem his mortgage to make it appear that everything was in order at the end of the firm's financial year displayed an unacceptable degree of dishonesty. The utilisation of monies held in client account for a number of purposes without ensuring that the client's proper instructions had been first obtained displayed an unacceptably careless and reckless attitude as did the respondent's failure to be punctilious in the observation of professional undertakings given by him. Such behaviour could only bring the solicitors' profession into serious disrepute and was wholly unacceptable. The Tribunal considered that it was right that the respondent should be Struck Off the Roll of solicitors and made an order to that effect further ordering the respondent to pay the costs of and incidental to the application and enquiry.

DATED this 16th day of February 1996

on behalf of the Tribunal



J R C Clitheroe
Chairman

*Findings filed with the
Law Society on the 26th
day of February 1996*

