No. 6985/1995

IN THE MATTER OF CHARLES DANIEL GIBSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G Barrie Marsh (in the Chair)
Mr. D J Leverton
Mr. K J Griffin

Date Of Hearing: 12th December 1995

FINDINGS

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

An application was duly made by Roger Field, solicitor of 31 Wolverhampton Street, Dudley, West Midlands on the 14th September 1995 that Charles Daniel Gibson solicitor of Ripley, Surrey, GU23 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 unbefitting a solicitor in the following circumstances namely that he had:-

(i) drawn monies from a client account other that as permitted by Rule 7 of the Solicitors Accounts Rules 1986, contrary to Rule 8 of the said Rules;

(ii) utilised clients' funds for his own purposes.

The application was heard at the Court Room No. 60 Carey Street, London WC2 when the said Roger Field solicitor and partner in the firm of Higgs & Sons, Inhedge House, 31

Wolverhampton Street, Dudley, West Midlands, DY1 1EY appeared for the applicant. The respondent was represented by Mr David Morgan of Wright Son & Pepper.

The evidence included the admissions of the respondent both as to the facts and allegations. Evidence as to character was given Mrs Diana Gibson, wife of the respondent, Mr James Johnson a partner with Messrs Easton Kinch & Bailey (EKB), Mr Dennis Mills , also of Easton Kinch & Bailey and oral evidence given by the respondent himself.

At the conclusion of these proceedings the Tribunal ORDERED that the respondent Charles Daniel Gibson of Ripley, Surrey GU23 be Struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £1,060.00 inclusive of VAT and disbursements.

The Tribunal agreed that the filing of the order be suspended for fourteen days.

The facts are set out in paragraphs 1 to 6 hereunder:-

1. The respondent was admitted a solicitor in 1972. Between May 1989 and January 1994 he carried on practice in partnership under the style of Belmont and Lowe ("B&L") at Henrietta House, 93 Turnmill Street, London EC1. Thereafter, he had been employed as an assistant solicitor by Easton Kinch & Bailey ("EKB") of 381 Ewell Road, Tolworth, Surbiton, Surrey KT6 7DF and (under the style of John Warren) of Ewell Surrey.

2. Wright Son & Pepper solicitors ("WSP") wrote to an Assistant Director of the Bureau on the 26th April 1995 on behalf of the respondent and enclosed a statement prepared by the respondent. The statement disclosed, inter alia, an admission by him that he had drawn cheques on B&L's client account for his personal use on the 4th January 1991 and the 18th April 1991 in the respective amounts of £3,000 and £2,500. The latter amount had been repaid. The sums had been used by the respondent to pay school fees for his eldest son. He described the surrounding circumstances to the extent that he could recall them.

3. EKB wrote to the Bureau on the 2nd May 1995 and indicated how they had become aware of the above matters on the 18th April 1995. The respondent had been suspended from his duties.

4. B&L wrote to the Bureau on the 26th May 1995 and described how in 1995 certain financial discrepancies on client account had come to light. A meeting had taken place with the respondent on the 20th March 1995 and a copy of the notes taken at that meeting was enclosed. B&L were making further enquiries.

5. On the 27th June 1995 B&L sent to the Bureau a copy of their letter to WSP of the 19th June 1995. The letter described the circumstances surrounding the crediting of the sum of £5,250. to the respondent's building society account on the 1st June 1990 and the failure of the respondent to provide a satisfactory explanation thereof. B&L opined that the sum represented part of missing clients' monies following the redemption of Smith Kline Beecham loan stock.

6. WSP wrote to the Bureau on the 19th July 1995 and acknowledged, on the face of it, that the above sum of £5,250. had been wrongly credited for the benefit of the respondent. He was making arrangements to rectify the position. WSP enclosed with their letter a psychiatric report upon their client.

The submissions of the applicant

7. The applicant was putting his case on the basis of the respondent's dishonesty. There were three separate misappropriations.

8. On the 3rd March 1991 the respondent requisitioned a cheque for £3,000 in favour of his own building society debited to the trust account of "L". Three months later on the 18th April 1981 he drew a cheque for £2,500 on the firms' client account in relation to the J Will Trust matter. This money was paid into the respondent's same personal building society account.

9. On or around the 26th August 1990 two amounts of £5,250. were received by the respondent to be credited to the L Trust. These monies represented the redemption of loan stock. Only one warrant was credited to the proper account. The other warrant was paid into the personal building society account of the respondent.

10. The respondent had effected replacement of the monies he had misappropriated in the following manner. On the 19th November 1993 he paid £2,897.25 of his own money into the J Will Trust. This represented the £2,500. misappropriated by him plus interest. This left some £8,250. plus interest still missing.

11. When these matters came to light earlier in the year the building society account had a balance of £5,873.46p. These sums were transferred out of the respondent's name into the names of the trustees of the L Trust. In this way, the monies representing the loan stock warrant were replaced. This still left some £2,376.54p plus interest outstanding which had also since been replaced by the respondent.

12. In April 1995 WSP submitted a voluntary statement written by the respondent in which he disclosed the first two misappropriations. It was explained that they were used to fund his eldest son's school fees. It went into detail about a particularly difficult period in his life at that time. The following week, the firm that was then employing the respondent, EKB, wrote to the Bureau in May 1995 advising that they had suspended him as a result of these matters. After confirmation that they could do so from the Law Society they then re-employed him as an assistant solicitor.

13. In the meantime B&L continued to make further enquiries which revealed the misappropriation which had taken place in 1990.

14. The matters before the Tribunal were serious matters; they not only constituted a breach of the Accounts Rules but they also demonstrated dishonesty. The respondent had continuously asserted that he could not remember what he had done. The Tribunal were referred to a psychiatrists' report dated 18th May 1995 which stated (inter alia) " I believe that (the respondent) knew what he was doing at the time with respect to the two incidents [at the time of writing the report, the doctor did not know of the third

incident] but he appears to have repressed all memory of his actions in transferring the money. As these actions were very likely in time to be detected they could be regarded as a form of "crie de coeur" in a life situation which had become intolerable to him."

15. The doctor had sent in a further letter dated the 25th July 1995 upon being appraised of the third misappropriation of £5,250. and, in essence, nothing different about the respondent's mental state was said in relation to the third matter.

16. It was noted that the respondent first made repayment of £2,500 in 1993 when he had discovered a short fall in the J Will Trust account. He did not discuss the repayment with his partners. If at the time of the misappropriation he had no recollection of what he was doing, he ought at least to have told them once he did become aware of what had happened to enable them to have an opportunity to ensure that there were no other problems waiting to be discovered.

17. Although it was put in mitigation that the respondent had volunteered his defalcations to the Bureau, it was the applicant's case that the respondent's wrong doing was already known. It was not a case where if the respondent had not volunteered the information, it would have remained undiscovered.

18. The applicant described the mechanics of the misappropriations. One in particular was troublesome. Two warrants for £5,250 were received from the respective company registrars. They were both made payable to the two trustees of the L Will Trust - one of the trustees being Doctor L and the other trustee being the respondent. The warrant that was legitimately paid in to the credit of the trust bore two signatures - that of Doctor L and the respondent. The one paid into the personal account of the respondent also bore two signatures - the respondent's and the purported signature of Doctor L (the respondent stated that this was the first time it had been put to him that there was a problem with the signature on the warrant. He was unable to remember the incident and could not confirm or deny what had happened).

19. The applicant accepted that during 1990/1991 the respondent was certainly beset with a number of problems which gave rise to pressure and resulting stress. Although this might be disputed by the respondent, it should be put on record that the relevant partner at B&L at the time would state that at no time did the respondent indicate to his partners that he felt under undue stress.

Submissions of the respondent

20. The respondent referred to his unsigned statement submitted to the Tribunal.

21. A substantive part of that statement dealt with the personal payments made on the 4th January 1991 and on the 18th April 1991. The respondent could not remember carrying out these transactions and could only say in mitigation that at the time he was under considerable personal stress in having to cope with a father who was seriously ill at home. His father's condition was a considerable worry and necessitated the respondent visiting his home at the weekend and often during the evenings. During this time the respondent was the only close member of his father's family and had to undertake full responsibility for him.

22. The respondent's father had agreed to assist the respondent with his son's school fees as and when the need arose but during the period in question he would not do so. After he had been settled into a nursing home he agreed that he would finance the children's education.

23. The respondent could not remember having effected either of the two client account withdrawals. The latter one he put right. He noticed this when he was updating the trust accounts in the Autumn of 1993.

24. With regard to the earlier withdrawal on the 4th January 1991 the respondent could not recall this at all and it came as a complete shock to him when it was brought to his attention in March 1995 when he attended a meeting at B&L with three of the partners. They advised him of the unauthorised withdrawal from client account. They had discovered this by writing to the building society and obtaining from the society details of entries on the account. Unknown to him, the building society then appeared to have transferred the account out of his name into the names of the trustees of the L Trust. The building society account at 1st January 1995 had a balance of £5,873.46 and thus a shortfall had been made good.

25. The respondent carried out an analysis of his building society account entries as he had absolutely no recollection of the withdrawal which was brought to his attention in March and he wanted to satisfy himself and B&L that there were no other such discrepancies. He sent his findings to both B&L and to his solicitors WSP. He could account for and supply documentary evidence to support virtually all of the entries but could find no documentary evidence for a credit of £5,250. on the 15th June 1990. As he could not recall either of the other two authorised transfers into his building society account, he was concerned about this sum and asked B&L to check their client account for the relevant period. On the 19th June 1995 B&L wrote to WSP advising them that they thought the £5,200 was a warrant due to the trustees of the L Trust which had been paid into the respondent's building society account. Upon their producing further evidence to that effect, the respondent agreed that must have been the case. Again he had no recollection whatsoever of his having taken that sum.

26. The respondent had repaid the sum of £5,250. with interest and had received no indication that there had been any other unauthorised transfers of client money.

27. On the 18th April the respondent felt it right to advise his present employers of the situation and was properly suspended by them. He attended the Law Society's Professional Ethics Department to seek advice who advised him that he should report himself to the Bureau, which he did. He was deeply ashamed at what he had done and bitterly regretted what had happened.

28. He could not really explain why he acted as he did. His behaviour was totally irrational. He would never knowingly deprive his clients of their funds and indeed he made full restitution as soon as he became aware of what he had done. He had sought medical help and could confirm that he was fully recovered from the near mental breakdown caused by the stress that at the time was exacerbated by a serious car accident.

29. The respondent's wife, Mrs Diane Gibson, read from her statement of the 5th November 1995. She described the difficult time which the respondent was going through in 1990/91 in relation to the respondent's father who was very ill. Additionally, he was suffering a great deal of stress at work.

30. The respondent was a man who bottled things up; she did not appreciate at the time the stress that he was under.

31. James Athol Johnson and Dennis Mills, partners in the firm of EKB gave evidence in support of the respondent. Mr Johnson, together with his co-partners Gerald Harris and Martyn Dakdorph had prepared a joint, unsigned statement.

32. Mr Johnson described the engagement of the respondent as an assistant solicitor in January 1994. The respondent commenced work in the Ewell office as a solicitor in charge of that office. From the outset of his employment, the partners were greatly impressed with his work, so much so, that in about the beginning of 1995 they entered into discussions with him with a view to his joining them as an equity partner at EKB.

33. It consequently came as a complete and utter shock when on the 18th April 1995 the respondent told them that whilst with his previous firm Messrs B&L in January and April 1991 he had misappropriated clients' monies for his personal use and he was therefore going to have to report himself to the Law Society.

34. The partners considered that they had no option but to suspend the respondent from work immediately, which was done. They also immediately removed his right to sign cheques or banking documents on their behalf. They informed their accountants of what the respondent had told them and instructed them to check with special care the accounts of clients of the firm whose affairs had been handled by the respondent. They took certain other additional measures to try and ensure that the possibility of any clients being prejudiced by any misdeeds of the respondent while employed by them were minimised.

35. These intensive and detailed investigations had not revealed evidence of any financial/or other wrong doing of the respondent whatsoever whilst in their employment.

36. The respondent had no access to any of the firm's client account funds. He remained a trustee of several trusts but in no case did he have sole signatory rights.

37. Following completion of those investigations and after consulting with the Professional Ethics Division of the Law Society about the firm's wish to lift their suspension of the respondent in August 1995 on the basis that he worked at their Tolworth office under supervision of Mr Johnson, Mr Harris and Mr Mills, the partners did lift the suspension and the respondent did return to work. They were influenced in that decision by the medical report they had received.

38. Mr Johnson referred to the evidence of a further misappropriation by the respondent in June 1990 of the sum of £5,250.

39. Mr Johnson described that the partners were particularly influenced in their decision to lift their suspension of the respondent by (a) the stress under which he seemed to be labouring when these three offences took place and the fact that the cause of such stress appeared to have ended. (b) the opinions set out in his psychiatrist report that (i) the behaviour of the respondent was totally out of character and as his offences were very likely in time to be detected they could be regarded as a form of cry for help in a life situation which had become intolerable to him. (ii) the chance of a repetition of behaviour in question was negligible. (c) the high regard the respondent's clients plainly had for him. (d) the fact that with one exception the small number of the respondent's clients that had been told of the offences had all decided to continue instructing him and EKB and (e) the fact that the partners were able to (and did) put controls in place which should minimise the risk of any repetition.

40. Should the Solicitors Disciplinary Tribunal decide to permit the respondent to continue practising as a solicitor, the respondent's employers would be very glad to continue his employment within the firm and that employment would continue to be under strict supervision.

41. Mr Mills gave evidence as to recript and opening of the post in the Tolworth office and as to the methods by which cheques were requisitioned. He described the personnel in each of the various offices.

42. The Tribunal was referred to the respondent's testimonials. Most were personal ones from clients but it would be noted that a former partner of B&L, Mr John Lewis, wrote in support of the respondent and stated that the respondent whilst at B&L was clearly less than happy with the file that he had to manage.

43. The respondent did not wish to play down the seriousness of his misappropriations. He accepted that it was conduct entirely unbefitting a solicitor. He was truly contrite and although he appreciated that the Tribunal might wish to punish him, it was hoped that the Tribunal could also bear in mind that the respondent was very highly valued by the community, his clients, and his employers. Indeed, three of his present employers attended the hearing in full support of him. It was hoped that the Tribunal would allow him to continue in practice albeit under strict supervision. The psychiatric report indicated that he had recovered. He had learned not to "bottle up" problems and his family were alerted to the problem. He contributed greatly to the welfare of the local community and undertook valuable charitable work.

44. The respondent should be given credit for the fact that he was the one who took the first step to bring this matter to the Bureau's attention and that he had sought guidance all along way.

The Tribunal FOUND this a difficult and unusual case. The respondent appeared to be a man who had a hitherto unblemished career in the law and was well regarded in the profession. Nevertheless due to a combination of circumstances, he appeared to have succumbed to a near nervous breakdown in 1990/91 and committed three acts of dishonesty. These were not isolated incidences. A major factor appeared to be that the respondent was having difficulties with his father at the time and the father had

refused to finance the respondent's eldest child's school fees. The respondent had provided no explanation for his conduct save to say that he could not recall what he had done.

The Tribunal looked carefully at the psychiatric report submitted on behalf of the respondent. They accepted that he was under a great deal of stress at the time and that his actions were totally out of character. However, from the medical evidence, the doctor could not say for certain that the respondent was suffering from a psychiatric illness at the material time. It was believed that the respondent did know what he was doing with respect to the incidents and that he appeared to have repressed all memory of them. The Tribunal could only conclude that it is therefore that the respondent's actions were dishonest.

The incidents amounted to a repeated course of action and could not be described as a temporary aberration.

The case was particularly sad as, according to the respondent, he could have obtained funds from elsewhere at the relevant time to pay his son's school fees and it was not necessary for him to make the misappropriations which he did.

The Tribunal were impressed with the support given to the respondent by both his family and present employers. Nevertheless, the Tribunal recognised that their overriding duty was to the public and the solicitors' profession. The damage which the respondent had done to the reputation of solicitors and to the trust which the public must have in the profession was incalculable.

The respondent very properly put matters right when they were brought to his attention and informed the Bureau of his conduct. Nevertheless, when weighed against the extreme seriousness of the offences and the damage done to the reputation of the profession, the Tribunal felt it inappropriate to allow the respondent to remain a solicitor and accordingly imposed the ultimate sanction upon him, Ordering him to pay costs in a fixed sum.

DATED this 24th day of January 1996

on behalf of the Tribunal

G B Marsh
Chairman

Filed [illegible] 26th day of January 1996