

IN THE MATTER OF STEPHEN PATRICK HOGAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A Gaynor-Smith (in the Chair)
Mr. A G Gibson
Mrs. C Pickering

Date Of Hearing: 23 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 30th October 1995 that Stephen Patrick Hogan of Tangmere, Chichester, West Sussex, PO21 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. drawn or caused to be drawn money from a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- b. used clients' funds for his own purposes;
- c. made or caused to be made false entries in books of account and false entries on file documents with a view to concealing the matters made the subjects of allegations a.) and b.) above.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 23rd January 1996 when Geoffrey Williams solicitor and partner in the firm of Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent did not appear and was not represented.

The respondent had, prior to the hearing, sent to the Tribunal a psychiatric report and a statement indicating that he would not attend the hearing.

The evidence before the Tribunal included the admissions contained in the respondent's before-mentioned statement.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Stephen Patrick Hogan of Tangmere, Chichester, West Sussex 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 £5,816.78p inclusive.

The facts are set out in paragraphs 1 to 18 hereunder:-

1. The respondent, born in 1954, was admitted a solicitor in 1991. At the material times he practised in partnership under the style of Hogan-Boyd at Sussex Chambers, 25 High Street, Bognor Regis, West Sussex and at 12 Eastgate Square, Chichester, West Sussex. He ceased so to practise on or about the 31st July 1995.
2. Upon notice duly given an inspection of the books of account maintained by Messrs Hogan-Boyd was carried out by the Investigation Accountant of the Law Society. The Investigation Accountant's report, dated the 9th August 1995, was before the Tribunal. That report revealed the matters set out in the following paragraphs.
3. During the inspection the respondent was diagnosed by a doctor as suffering from a state of acute anxiety and did not attend his offices after the 10th July 1995. The Investigation Accountant requested his presence at the final interview to comment on the matters set out in the report. The respondent did not attend the meeting. The respondent had made certain admissions prior to the 10th July 1995 and had subsequently spoken on the telephone to the Investigation Accountant on the 11th July 1995. One set of books was maintained in respect of both offices of the firm which was not in compliance with the Solicitors Accounts Rules as it contained numerous false entries made at the respondent's instigation. There were further serious breaches. In view of that, it was not considered practicable to attempt to compute the partners' liabilities to clients. The respondent's partner agreed with the Investigation Accountant that a minimum cash shortage of £119,374.51 existed on client bank account as at the 31st May 1995.
4. On the 8th July 1995 the respondent handed a cheque made payable to the firm in the sum of £50,000.00 drawn on a personal account at the Royal bank of Scotland to his former partner saying that the payment was in rectification of the shortages identified in respect of T deceased (referred to hereunder) and any further shortages that might be identified. On the 17th July 1995 the Investigation Accountant was notified that the cheque had not been honoured on presentation. The partnership was not able to replace the minimum cash shortage of £119,374.51: the Solicitors Indemnity Fund had been made aware of the situation.

5. The minimum cash shortage arose in the following way:

	£
(i) Personal payments from client bank account	20,500.00
(ii) Improper payments from client bank account	44,787.01
(iii) Improper transfers from client to office bank account	<u>54,087.50</u>
	<u>119,374.51</u>

6. The personal payments were represented by five payments varying in amount between £1,500.00 and £9,000.00 and totalling £20,500.00 made from client bank account at the instigation of the respondent. The payment of £9,000.00 was made on the 20th April 1995. The payment request form raised by the respondent described the payment as "Payment as requested by beneficiaries to their account". A copy letter addressed to H F C Bank was found in the relevant file "We enclose a cheque/bankers draft in your favour in the sum of £9,000.00 for the credit of the account of Mrs T in accordance with clients instructions". On the 8th July 1995 the respondent explained to the Investigation Accountant that the payment was an interim distribution to Mrs T who was in need of funds but in the telephone conversation on the 11th July 1995 admitted that he held a personal account at H F C Bank and the payment of £9,000.00 was made to that account. The respondent contended that the monies might subsequently have been paid from his personal account to another client.
7. It was further noted that the ledger account had been charged, inter alia, with payments varying in amount between £971.27 and £55,000.00 and totalling £115,116.40. No evidence was seen on the client matter file to confirm that the payments related to that client.
8. It was also noted that on the 5th May 1995 the ledger account had been credited with a lodgement of £32,032.99 described as "BAL LIFE POLICY", thereby increasing the credit balance on that account to £32,033.66. It had since been confirmed that the funds were actually received on behalf of Mrs M, an unconnected client.
9. The respondent acted for Mr T in connection with his claim for compensation following an accident at work. The claim was settled on the 22nd June 1994 for £182,000.00, the defendants to pay Mr T's legal costs. On the 4th August 1994 the relevant account in the clients' ledger was charged with a payment from client bank account of £5,000.00 described as "ROYAL BNK SCOT". The payment request form raised by the respondent detailed the payment as "in accordance with client's instructions". The returned paid cheque indicated that it had been paid in to an account held in the name of the respondent and his wife.
10. The Investigation Accountant identified two improper payments which had been made from client bank account on behalf of two clients. The first in respect of Mrs T in the sum of £40,154.46 and the second in respect of Mr H in the sum of £4,632.55 totalling £44,787.01.
11. The respondent acted for Mrs T in connection with the purchase of a property at Bognor Regis at the price of £53,500.00. On the 28th April 1985 contracts were exchanged when a deposit of £2,200.00 was paid to the vendor's solicitors, leaving a balance due on completion of £51,300.00. Completion took place on the 12th May 1995 when the relevant account in the clients' ledger showed a balance of £11,272.54.

Client bank account was charged a CHAPS payment of £51,300.00 to the vendor's solicitors which was allocated in the books of account as follows

<u>Date</u>	<u>Amount</u>	<u>Client Ledger Account charged</u>	<u>Balance Remaining</u>
a) 15.05.95	£11,145.54	T deceased	£127.00
b) 16.05.95	39,008.79	C deceased	Nil
c) 16.05.95	<u>1,145.67</u>	S deceased	£1,542.76
	<u>£51,300.00</u>		

The file indicated that the balance at completion had been satisfied by the payment of £11,145.54 from the firm with the balance of £40,154.46 apparently having being paid direct to the vendor's solicitors from Prudential Assurance, Belfast. The respondent confirmed to the Investigation Accountant however, that the entire balance due on completion had been paid to the vendor's solicitors from the firm's client bank account. He contended that he had put the misleading copy correspondence on the matter file in order to "protect the people dealing with the file".

13. The file note was prepared by the respondent and placed on the C deceased matter file which indicated that the payment of £39,008.79 was in respect of estate funds paid to another solicitor for final distribution. Initially the respondent contended that payment had been made properly with the full knowledge of the executors of C deceased. An executor, one of the firm's consultants, said that the respondent had explained to him that the payment was 'an error of description on the client ledger card', claiming that the funds had in fact been transferred to a designated deposit account.
14. The respondent admitted that the payment of £39,008.79 had not been made properly and that the affairs of C deceased were unconnected with Mrs T's purchase. The funds held in client bank account on behalf of C deceased had been improperly reduced by £39,008.79.
15. File notes prepared by Mr H had been placed on the matter file of S deceased indicating that the payment of £1,145.67 had been in respect of a debt owed by the estate. He later admitted that the payment was unconnected with that estate.
16. Between the 7th July 1994 and the 7th February 1995 five transfers varying in amount between £3,525.00 and £30,000.00 and totalling £54,087.50 had been made from client to office bank account in respect of three clients. In two matters the transfers purported to be in respect of costs. In each case no written intimation of costs, or bill of costs was delivered to the client. What purported to be copy bills had been lodged in the relevant files and apparently counted for costs totalling £8,000.00. One copy bill was annotated by the respondent with the words "Bills handed to client and son at appointment."
17. In another matter the respondent raised a payment request describing the payment as "Barclays Bank PLC as per instructions" although there was no evidence on the file of Miss D that he had received such instructions from her. The returned paid cheque showed the payee as Barclays Bank Plc and indicated that the cheque had been paid into the firm's office account.

18. The respondent admitted in a note to his former partner that he misused funds held on behalf of Mr & Mrs E for the benefit of another unconnected client. The sum concerned was £81,500.00. The clients had instructed the respondent to invest the monies in a "clients' fund" held offshore for a period of three years. The firm's books did not show any liability or balance held on behalf of Mr & Mrs E and the respondent admitted, inter alia, in the note written to his former partner that the money of Mr & Mrs E had been used to assist another client.

The submissions of the applicant

19. The Investigation Accountant's report painted a clear picture of the respondent's defalcations. In addition to the misuse of clients' monies, in particular monies taken from client account and paid for the credit of his own account, the respondent had been guilty of serious misconduct. He had attempted to cover his tracks by making false entries in the books and by providing a false record of what had happened on the relevant client file.
20. In the submission of the applicant the respondent had been guilty of disgraceful conduct at the highest end of the scale of conduct unbecoming a solicitor. In his submission the respondent had clearly been guilty of dishonesty.
21. Because the respondent had been in practice with an honest partner claims would not fall upon the Law Society's Compensation Fund but upon the Solicitors' Indemnity Fund. At the date of the hearing the claims to the Indemnity Fund amounted to a very large sum indeed.
22. The respondent's activities had been the subject of a police investigation but it was not known whether any charges had been or were to be made.

The submissions of the respondent (contained in his beforementioned statement)

23. The respondent apologised for his non attendance not wishing to waste the time of the Tribunal or incur additional costs. He confirmed that he had admitted the allegations made against him.
24. The respondent's position was supported by his clinical psychologist. His desire to please and his inability to be assertive and not show, or be able to discuss, when he was not coping or needed help, together with the great feeling of debt which he owed to the late Mr P who stood by the respondent over the years all contributed to the respondent's difficulties.
25. He had problems of stress and anxiety in the extreme whilst studying as a solicitor's clerk which he fought and overcame. He was delighted and very proud to have qualified as a solicitor. He had put heart and soul into his work and commitment to P and Company. After qualifying he immediately became a partner on condition that he pay £50,000.00 to Mr JP and signed to become jointly liable to a £90,000.00 office overdraft. He felt the offer of a partnership had been an honour and with hard work the monies involved would be justified. Shortly after he became a partner Mr E P died and Mr J P wished to become a consultant. That left the respondent as the senior partner who was joined by a new partner to whom he could not speak about the problems because he felt all the responsibility fell upon his own shoulders.

26. The combination of financial stress and personal anxiety problems were too much for the respondent: he could not bring himself to confide in anybody, including his wife.
27. The respondent lurched from one mistake to another and for a time he did not know right from wrong or one day from the next. He described himself as being completely out of control. At the time he felt that he would be able to sort everything out and pay the monies back into the right accounts.
28. The respondent apologised profusely for his conduct which was solely of his own making. He tried his hardest to make matters work out and failed owing to decisions taken by him while he was unable to look at situations in their correct context and place.
29. The psychiatric report before the Tribunal indicated that the respondent had adopted an unrealistically high sense of responsibility for the welfare of his firm. He fell into a trap of transferring money to and from different accounts apparently without the intention of stealing the money. It became more and more difficult for him to extricate himself and had come to accept that what he had done was wrong and to regret his actions. He had acknowledged the value of discussing his difficulties rather than trying to convey a facade of being able to cope with all situations. In addition he was gradually learning to become more assertive. He had worked long hours and drunk more alcohol rather than admit to himself that he was unable to cope. He justified his actions by mentally blocking any thoughts that he was doing wrong and reassuring himself that he would pay the money back.

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

The respondent had appeared before the Tribunal in 1984 when the Law Society sought to have an order made in respect of him pursuant to Section 43 of the Solicitors Act 1974. It had been alleged that the respondent had altered certain documents to avoid a proper charge of stamp duty on more than one occasion, had described himself as a solicitor when witnessing certain documents, had caused the firm employing him to be in breach of the Solicitors Accounts Rules 1975 by drawing money from client account in circumstances other than those permitted by Rule 7 of the said Rules and had misled a client of the firm by informing her untruthfully that he had settled an action to which the client had been a party on payment of a sum which had not in fact been paid. The respondent paid monies apparently due from the firm's office account.

On that occasion the Tribunal was told that the respondent had completed his articles and had one head of the Law Society's Qualifying Examination (Part II) to pass. He accepted full responsibility for what he had done. He had derived no personal gain and had initially used his own funds to make good the errors he had made when he was no longer in a position to do that he had manipulated accounts. There had been no ultimate loss to any client, although financial loss had been caused to his employers. It was said that the respondent had learned his lesson and hoped that he might qualify as a solicitor. The Tribunal made the order sought and further Ordered that the respondent should pay the costs of the application and enquiry. The Tribunal delayed the coming into effect of their order until the 1st July 1985 to give the respondent's employers the opportunity to seek the permission of the Law Society to continue with

the employment of the respondent. The Tribunal went on to say that what the effect might be of the Tribunal's order on the respondent's prospects of being admitted a solicitor was a matter for the Law Society.

On the 8th August 1991 the Tribunal heard an application by the respondent that the order made pursuant to Section 43 of the Solicitors Act 1974 in respect of him might be revoked.

It had seemed to the Tribunal that the senior partner to whom the respondent had been responsible at the firm where he was articled might well have been somewhat unapproachable and overbearing. The respondent had been an experienced fee earner who had not been given an appropriate level of support. Since the imposition of the Order pursuant to Section 43 the respondent had demonstrated determination and strength. He had passed the Solicitors Qualifying Examinations and was undertaking a course of study which would lead to a law degree. He was a happily married man: an active member of the Roman Catholic Church concerned in local charitable and community organisations. Excellent testimonials and affidavits had been placed before the Tribunal and it was their view that there could be no doubt that the respondent had proved himself to be an outstanding member of society and a person in respect of whom any order regulating control or restricting employment in the legal profession was wholly inappropriate. The Tribunal expressed its pleasure in ordering that the order made pursuant to Section 43(2) of the Solicitors Act 1974 be revoked as from the 3rd day of October 1991.

The Tribunal had stated that it understood that it was the respondent's intention to seek admission to the Roll of Solicitors and said that it would draw its decision and its own views as to the respondent's good character and capability to the attention of the Law Society in addition formally to filing the Order of Revocation.

It is with extreme regret, bearing in mind the history of the respondent before the Tribunal, the great support that had been given to him by his employers at the time when he sought to have the Section 43 Order revoked and to those who had supplied testimonials and affidavits to the Tribunal as well as the Tribunal itself who had supported the respondent, that all of those concerned had been very badly let down by him. It had become clear that he was incapable of acting in an honest and honourable manner that he had on many occasions set out to deceive by falsifying records and he could not exercise the integrity and probity required of a solicitor. The Tribunal ORDERED the respondent to be Struck Off the Roll of Solicitors and further Ordered that he pay the costs of and incidental to the application and enquiry.

DATED this 22nd day of February 1996

on behalf of the Tribunal

Adrian Gaynor-Smith

A Gaynor-Smith
Chairman

