

IN THE MATTER OF PHILIP GRAHAM REES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the Chair)
Mr. G B Marsh
Mr. Dame Simone Prendergast

Date Of Hearing: 19th March 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 Gerald Malcolm Lynch solicitor of 16 Warrior Square, Southend on Sea, Essex on the 2nd January 1996 that Philip Graham Rees solicitor of _____, Cwmbran, Gwent, NP44 _____ 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.

A supplementary statement was made by the applicant on the 18th March 1996. The respondent had no objection to the late introduction of the further matters contained therein. The Tribunal consented to their being dealt with at the hearing on the 19th March.

The allegations set out below are those contained in the original and supplementary statements.

The original allegations were that the respondent had:-

- (1) dishonestly alternatively improperly utilised clients' money for his own purposes;

- (2) acted in breach of the Solicitors Accounts Rules 1991 in the following particulars:-
- (a) he had drawn from clients account monies other than pursuant to the provisions of Rules 7 and 8 and utilised the said monies for his own alternatively for the benefit of other clients not entitled thereto;
 - (b) he had acted in breach of Rule 11 of the Solicitors Accounts Rules in that he effected or caused to be effected false entries in his books of account;
 - (c) he had acted in breach of Rule 3 of the Accounts Rules in that he received clients' money and failed to pay the same into clients account;
- (3) By virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor.

The supplementary allegations were that the respondent had:

- (i) dishonestly alternatively improperly utilised clients' money for his own purposes alternatively for the purposes of other clients not entitled thereto;
- (ii) acted in breach of the Solicitors Accounts Rules 1991 in that he drew from client account moneys other than pursuant to the provisions of Rules 7 and 8 and utilised the same for his own alternatively for the benefit of other clients not entitled thereto;
- (iii) failed to honour the terms of an undertaking given by him in his practice as a solicitor. In the alternative he failed to honour the same with reasonable expedition;
- (iv) failed to reply to correspondence and enquiry addressed to him by a building society client and bank;
- (v) by virtue of each and all of the aforementioned has been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 19th March 1996 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs Drysdale & Janes of 16 Warrior Square, Southend on Sea Essex appeared for the applicant and Alan G Bolter solicitor of Messrs Watkins & Gunn solicitors of Glantorfaen House, Hanbury Road, Pontypool, Gwent, NP4 6XY represented 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 be Struck Off the Roll of solicitors and further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £5,010.33p inclusive.

The facts are set out in paragraphs 1 to 11 hereunder:-

1. At all material times, the respondent was a solicitor in partnership under the style and title of Bowen-Rees-Jones, Equity House, Tredegar Street, Risca, Gwent. He was admitted on the 16th May 1977 and was forty five years of age.
2. Pursuant to notice given the Investigation Accountant of the Law Society inspected the books of account of the respondent at Equity House aforesaid, commencing on the 9th October 1995. The report was dated 27th October 1995 and a copy was before the Tribunal.

3. Inter alia, the following relevant matters emerged from the inspection:-

- (a) Separate books of account were maintained in respect of the two offices of the respondent's firm. The respondent was the resident partner at the Risca office.
- (b) The books of account were not in compliance with the Solicitors Accounts Rules as they were incomplete and contained numerous entries relating to fictitious bills of costs.
- (c) The respondent admitted to the Investigation Accountant that there had been a minimum cash shortage of £44,401.29p on clients bank account prior to the inspection date caused by the respondent having misused clients' funds in the following matters:-

(i)	Improper retention of clients cash	£2,951.14
(ii)	Personal payment	1,000.00
(iii)	Improper transfers from client to office bank account	30,326.99
(iv)	Overpayments	8,273.16
(v)	Client monies improperly held in office bank account	<u>1,850.00</u>
		<u>£44,401.29</u>

- (d) The shortage had been replaced largely by virtue of a loan to the respondent by a Mrs P.
- (e) The respondent admitted that he had received cash from clients specified in the report which cash receipts were not recorded in the books of account and which the respondent had utilised for his own benefit.
- (f) A payment had been made from the estate of Mrs G C deceased in the sum of £1,000.00 which was not to do with the client's affairs but represented a personal payment.
- (g) Twenty-six transfers between 9th February 1994 and 2nd June 1995 had been made from client to office account which the respondent admitted were all improper. They varied in amount between £80 and £2,350 and totalled £30,326.99p.

- (h) Fourteen overpayments had been made between 30th November 1994 to 10th July 1995 varying in amount between £10 and £2,696.25 and totalling £8,273.16.
4. On the 23rd November 1995 the Solicitors Complaints Bureau (the Bureau) wrote to the respondent asking for explanation in relation to the above matters. At the date of the application no response thereto had been received to support the statement.
 5. On the 20th December 1995 Barclays Bank at Coventry wrote to the Bureau. The Bank held undertakings dated March 1990 in respect of a property at Bridge Street, Risca and October 1990 in respect of two properties at Tredegar Street, Risca. The undertakings were in the usual form to protect the security of the Bank in making mortgage advances. Correspondence addressed to the respondent had not been answered.
 6. The Bureau wrote to the respondent in respect of this complaint on the 10th January 1996.
 7. Bradford and Bingley Building Society at Newport complained to the Law Society on the 11th January 1996. Various letters had been sent by the Building Society to the respondent to which no response had been made.
 8. On the 25th January 1996, Messrs. Granville-West Chivers and Morgan, solicitors wrote in complaint against the respondent. He had given an unqualified undertaking to have certain rights of way as therein set out removed from deeds. There had been promises and attempts to secure the observation of the undertaking without success.
 9. The solicitors representing the respondent had indicated shortly before the hearing that the Bradford & Bingley and Barclays Bank complaints should be resolved in the "near future".
 10. The solicitors representing the respondent had also identified further shortages on client account as follows:-
 - (a) The respondent acted for Mr B in a matrimonial matter. The matrimonial property had been sold and net proceeds of approximately £29,500 were to be held on deposit pending court determination. All but £48 had gone from clients account although the purposes for which the money had been utilised was not made clear.
 - (b) In the probate matter of J deceased there had been unauthorised withdrawals from client account by way of cheque payments and transfers up to a probable deficiency of between £15,000 and £16,000.
 - (c) In a probate matter of E P deceased, there was a shortfall due to unauthorised withdrawals of between £17,000 and £18,000.
 11. The respondent accepted that there was a shortfall in respect of these three matters together totalling as much as £63,500.

The submissions of the applicant

12. The applicant took the view that the respondent had dishonestly utilised client's money for his own purposes and had been guilty of the alleged breaches of the Solicitors Accounts Rules. At best there had been improper use of clients' money. The applicant put the case as one of dishonesty.

The submissions of the respondent

13. It was said on behalf of the respondent that he wished to make an absolutely clean breast of all matters. To that end the Tribunal was told that in two further estates, W E deceased and G H deceased two further shortfalls had been identified and it was likely that the total deficiency on client account would be as much as £50,000 in respect of those two matters.
14. Until 1991 the respondent had practised both as a partner and as a sole practitioner from the offices at Risca. Even when he was a partner the respondent was at all times the only solicitor in that office. Up to 1991 the respondent's books had been kept in good order. In April of 1991 the Investigation Accountant of the Law Society had inspected the books and had found no breach of the Solicitors Accounts Rules.
15. Since then the respondent's firm had suffered a decline in the number of instructions in private client work. By 1993 certain building societies had confirmed that no sole practitioners would be instructed to look after their interests in connection with mortgage advances. At that point the respondent entered into a "loose" partnership agreement. There was no evidence that any funds were misappropriated between 1991 and 1993.
16. Until about 1992/93 Abbey National had a very strong agency with the respondent. It provided him with an annual income of as much as £24,000. That company had a policy of closing agencies and did so at short notice. That event alone removed a substantial proportion of the respondent's income.
17. At about the same time interest rates fell and monies and interest earned on client account diminished considerably.
18. As a result of the removal of the agency and the falling of interest rates the respondent lost some thirty or forty percent of his annual income.
19. The respondent needed a gross fee turnover of £9,000 per month in order that his firm might survive. There were a number of occasions where his monthly gross fee turnover amounted to only £2,000. The £9,000 required was to run the business and did not take into account any income paid to the respondent himself.
20. The partnership described as a loose arrangement turned out to be a very very ill advised partnership. The respondent's partner was not an asset. He had a very poor track record with banks and with the Law Society. As a result of the respondent's association with that partner the respondent's former good relationship with his bank changed. Eventually all the bank facilities were withdrawn and the bank would deal

only with cleared funds. It insisted that even, for example, building society cheques should be cleared before being drawn upon. That made meeting conveyancing completion dates very difficult.

21. In addition to those considerable pressures upon the respondent in his practice he took on a large outside commitment in connection with a "fight" to arrange for a local school, of which the respondent was a governor, to achieve grant maintained status. The outcome was that that ultimate goal was not achieved but the respondent had spent an enormous amount of time on the project. With all of the pressures upon him in early 1993, the respondent succumbed to temptation. He made some lump sum transfers from client account to office account without appropriate paperwork having first been prepared. The intention was of course to refund any overpayment almost immediately.
22. The partnership accountant (previously employed by the other partner) proved totally inadequate. Up to November 1994 there had been chaos within the firm's accounts system. No real control had been exercised over the accounts system of the partnership by either of the partners. A new computer, a new cashier, a new accountant were introduced and the books brought up-to-date. It was then that the extent of the respondent's accounting difficulties was established.
23. With regard to the undertakings in respect of which complaint had been made, the undertakings given were ill advised. In one case the respondent had to pay £22,000 from his own resources in order to honour the undertaking. In another case concerning an accident to a client, the respondent had not taken relevant steps and paid the client £5,500. The client had understood that that was an interim payment.
24. The respondent had taken on an assistant solicitor in the hope that more work might be generated. The cost of the employment of the assistant solicitor was to have been shared between the two offices in the partnership but in fact the whole of the cost fell upon the office of the respondent.
25. The respondent transferred money from client account to office account to alleviate problems. That money was put back in a week. However once he had started on that slippery slope there was no going back.
26. With regard to the Barclays Bank undertakings, the matter did not appear to be unduly serious. An incorrect form had been used. A new form had been executed by the respondent's clients and the respondent, although he had been dilatory. The Land Registry was now dealing appropriately with the matter.
27. With regard to the complaint from Bradford & Bingley Building Society, they had opened a new agency after the removal of the Abbey National agency. When that agency was closed the building society was satisfied that everything was in order, but their auditors had carried out a comprehensive check and it was found that about £200 was unaccounted for owing to the cashiers inaccurate recording in passbooks.

28. The respondent removed himself from his office after the Investigation Accountant's visit. He had expected the person left in charge to deal with the matter of £200.00 but it appeared that he had not.
29. In connection with the complaint of Granville-West Chivers and Morgan, the respondent had failed to honour an undertaking. He had given an undertaking with which he knew it would probably be impossible to comply. He succumbed to pressure to ensure that a conveyancing transaction was completed.
30. The respondent had always had his clients' best interests at heart.
31. The position in which the respondent found himself had had a profound effect upon the respondent himself and his family. The disciplinary proceedings were likely to be reported in his local newspaper.
32. The Tribunal was asked to give the respondent credit for his frank admissions.
33. It was hoped that the respondent might be able to continue to practise as a solicitor albeit it with substantial limitations placed upon his Practising Certificate.
34. The money utilised by the respondent had not been spent on riotous living but in an attempt to keep his firm afloat.
35. The Tribunal was invited to consider the bundle of testimonials offered in support of the respondent handed in at the hearing.

The Tribunal FOUND all of the allegations to have been substantiated, indeed they were not contested. At a hearing before the Tribunal on the 28th September 1995 the following allegations were found to have been substantiated against the respondent. The allegations were that the respondent had:-

- (a) contrary to the provisions of Section 34 of the Solicitors Act 1974 and to direction made by the Law Society pursuant to statutory power failed to file alternatively had unreasonably delayed in filing an Accountant's Report in relation to his practice as a solicitor and as by statutory provision and direction aforesaid required;
- (b) as a result had been guilty of conduct unbecoming a solicitor.

On that occasion the Tribunal said that it was concerned that the respondent had not complied absolutely with a condition imposed upon his Practising Certificate that he file six monthly Accountant's Reports with the Law Society. The Law Society imposed that requirement to ensure that everything in a solicitor's practice was in order so far as the handling of clients' monies was concerned and was thus able to ensure that the member of the profession concerned was an honourable and trustworthy person; this in turn enabled the Law Society to give assurance to prospective clients that monies entrusted by them to their solicitor were not in jeopardy. The Tribunal were concerned that the respondent had adopted a somewhat cavalier attitude to the requirement that he file six monthly accountant's reports and thereafter to the fact that

he had failed to do so. That was unacceptable. The Tribunal ordered the respondent to pay a fine of £2,000.00 to be forfeit to Her Majesty the Queen and further ordered him to pay the costs of and incidental to the application and enquiry in a fixed sum.

Despite his appearance before the Tribunal only a few months previously, the respondent had now appeared again to face allegations of a far more serious nature. The utilisation of clients' funds for a solicitor's own purposes was one of the most serious forms of professional misconduct. It was the view of the Tribunal that the respondent had been dishonest in his handling of clients' monies, such dishonesty cannot be tolerated and it is not appropriate that a dishonest solicitor should remain on the Roll. The Tribunal ORDERED that the respondent be Struck Off the Roll of solicitors and further ordered that he pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of the Law Society) in a fixed sum..

DATED this 22nd day of April 1996

on behalf of the Tribunal

A G Gibson
Chairman



Findings filed with the
Law Society on the 24th
day of April 1996