

IN THE MATTER OF DAVID EDWARD GERVAISE-JONES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the Chair)

Mr. A Gaynor-Smith

Dame Simone Prendergast

Date Of Hearing: 22nd October 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 (subsequently the Office for the Supervision of Solicitors) by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 21st August 1996 that David Edward Gervaise-Jones of

Alderney, Channel Islands might be required to answer the allegations contained in the statement which accompanied the application and that such orders 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) used clients' funds for his own purposes.
- (b) drawn monies out of a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- (c) improperly paid monies the subject of a controlled trust into his office account contrary to Rule 12 Solicitors Accounts Rules 1991;

- (d) improperly paid clients' money into office account contrary to Rule 3 Solicitors Accounts Rules 1991;
- (e) rendered accounts to beneficiaries which were false and misleading.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 22nd October 1996 when Geoffrey Williams solicitor and partner in the firm of Messrs. ~~Drysdale & James~~ of 36 West Bute Street, Cardiff appeared for the applicant and Simon Buckhaven of Counsel instructed by the respondent appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent and exhibit DEG-J1, being two letters confirming payments made by the respondent.

At the conclusion of the hearing the Tribunal ORDERED that the respondent David Edward Gervaise-Jones of Alderney, Channel Islands 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 £2,720.47 inclusive.

The facts are set out in paragraphs 1 to 10 hereunder.

1. The respondent, born in 1952, was admitted a solicitor in 1957. At the material times he practised as a solicitor on his own account under the style of Gervaise-Jones & Sons at Georgian House, 194a Station Road, Edgware, Middlesex. He ceased so to practise upon intervention into his practice by the Law Society on the 30th April 1996.
2. Upon notice duly given to him an inspection of the respondent's books of account was carried out by the Investigation Accountant of the Law Society. The Investigation Accountant's report dated the 29th April 1996 was before the Tribunal.
3. The report revealed that the respondent's books of account were not in compliance with the Solicitors Accounts Rules as they contained numerous improper transfers from client to office bank account. The Investigation Accountant did not feel able to reply upon the entries contained in the respondent's books nor to attempt to calculate his liabilities to clients as at the 31st March 1996. However at that date a minimum cash shortage of £65,054.37 was found to exist and two further overpayments totalling £2,352.97 made during April 1996 increased the minimum cash shortage to £67,407.34 by the 3rd April 1996.
4. The minimum cash shortage was partially rectified by the receipt of funds from a client who had been overpaid and by a transfer from office to client bank account. The remaining minimum cash shortage was £43,173.25 which the respondent was not in a position to replace.
5. The minimum cash shortage arose in the following way:

(i)	Misappropriation of Client Funds	£43,173.25
(ii)	Improper transfers from client to office bank account	13,876.62

(iii)	Debit balances - prior to 31.3.96	6,104.50	
	- post 31.3.96	<u>2,352.97</u>	8,457.47
(iv)	Controlled trust funds improperly retained in office bank account		<u>1,900.00</u>
			<u><u>£67,407.34</u></u>

6. The misappropriation of clients' funds occurred in connection with the matter of Mrs D deceased in which the respondent and Mrs S were the deceased's executors. Mrs D died on the 15th May 1994 leaving a net estate of £338,214.00. After realisation of the assets, the payment of the deceased's liabilities, deduction of the respondent's firm's costs and payments to beneficiaries, including Barnados, had been made, there remained a credit balance of £43,173.25. A review of the estate accounts sent to Mr. S and Barnardos revealed that they differed greatly from the true position. The sum of £43,173.25 had been withheld from the residuary beneficiaries. The respondent admitted that the estate accounts he had sent out concealed the fact that £43,173.25 had not been paid to the residuary beneficiaries. The respondent achieved a nil balance after making excess transfers from client to office bank account of £28,173.25 and two payments respectively of £8,500 and £6,500 had been made to the respondent's own account at the Halifax Building Society and the Nationwide Building Society.
7. The respondent told the Investigation Accountant that he had transferred ten amounts totalling £65,023.50 from client to office bank account purporting to be in respect of his costs but he had submitted a bill for only £25,850.00. He contended that two bills for work undertaken prior to Mrs D's death (totalling £11,000.25) had not been included on the estate accounts and that his true costs were £36,850.25 in which case he agreed that £28,173.25 had been over-transferred. The true position had not been revealed to the residuary beneficiaries.
8. Three transfers had been made from client to office bank account in relation to three client ledgers in August and September of 1995 and March of 1996, the largest transfer being the sum of £5,429.12 and smallest £4,112.50 the total being £13,876.62. The respondent told the Investigation Accountant that those transfers had been made on account of costs but had been made in error. During the period 15th September 1995 to 3rd April 1996 overpayments varying in amount between £19421 and £4,250.00 and totalling £8,457.47 had been made on account of four clients. The largest overpayment was attributed to error by the respondent. The respondent was the sole executor of the estate of Mrs P deceased who died on the 12th February 1995. £1,900 had been lodged in office bank account on the 5th May 1995. The respondent agreed that that amount should have been lodged in client bank account.
9. Two further matters were revealed in the Investigation Accountant's Report. The first concerned the estate of Mrs S deceased in respect of which the respondent had acted for himself and Mrs M who were the executors of the late Mrs S who had died on the 26th April 1996 leaving an estate valued at £100,000 net. Between May and October 1995 estate assets of £22,858.66 had been realised and lodged in client bank account. In the same period four transfers totalling £17,137.00 had been made from client to office bank account in respect of costs. The respondent told the Investigation Accountant that his co-executor had been given an interim estate account showing the level of his fees and she was satisfied with the amounts charged.

10. The respondent had acted for Mrs F, who was aged 93, in connection with her personal affairs and the sale of a property. A review of the relevant client ledger account revealed that during the period 9th May 1994 to 5th October 1996 six amounts totalling £165,884.92 had been received on behalf of Mrs F and lodged in client bank account. During the same period ten transfers totalling £48,737.75 had been made from client to office bank account in respect of costs. The respondent had said that Mrs F had been aware of the bill of costs and there was "no problem".

The Submissions of the Applicant

11. The respondent had said in letters addressed to the Solicitors Complaints Bureau that he wished to state categorically and to offer his absolute assurance that it had never been his intention permanently to deprive any client or beneficiary or indeed anyone else of any monies which were properly due to them from his client account. The sole reason why the charity in the case of Mrs D deceased received different accounts from the account rendered to his co-executor was an attempt by the respondent to obtain further time in which to earn sufficient funds on other work to make up the balance.
12. Nevertheless even if there was no intention permanently to deprive in the mind of the respondent, the respondent had taken clients' money for his own purposes and in the case of the late Mrs D's estate had transferred monies to his own building society accounts. He had done that behind the backs of his clients which in the submission of the applicant amounted to dishonesty.
13. The respondent had explained that he had been under pressure, but that could not excuse the dishonest utilisation of clients' monies.
14. The respondent in his letter addressed to the Bureau had also asked that his practice might not be closed so that he could work through his difficulties. Clearly that was unrealistic as the Law Society could not allow a solicitor to continue to practise and run his business with a shortfall on client account. Such a shortage of clients' money was a grave matter.
15. In the respondent's affidavit filed with the Tribunal, he admitted transgressions over and above those set out in the Investigation Accountant's report. The Tribunal had been invited to take notice of the full extent of payments which had been made by the respondent to put things right.
16. In the submissions of the applicant the Tribunal could not overlook the substantial overcharging by the respondent. The respondent had explained those because he had suffered financial difficulties and had also explained that he had taken what he described as "stop gap measures."
17. The Law Society's Compensation Fund had paid out £51,615.62, but the applicant accepted that the respondent had at the date of the hearing paid back £49,988.26. He had only shortly before the hearing been notified of the relatively small outstanding balance.

18. Despite the respondent's protestations that he had no intention permanently to deprive his clients of monies and the commendable steps which he had taken to ensure that nobody suffered loss, the Tribunal was invited to consider that the respondent had been guilty of serious dishonesty. He had found himself faced with a crisis and had utilised clients' funds as a resource to help him out in difficult times. He had made attempts to cover his tracks. In the submission of the applicant there was clear dishonesty on the part of the respondent and his lack of intention permanently to deprive his clients of their money was not a relevant matter for consideration by the Tribunal.

The Submissions of the Respondent

19. The respondent had not formulated any intention permanently to deprive his clients of any money. He was not a dishonest person and it had always been his intention to repay excess transfers.
20. Prior to the intervention into his practice by the Law Society the respondent was determined and remained determined that no client or beneficiary should suffer any loss by his own conduct. The respondent had encashed a pension fund to make full repayment of all monies, including the costs of the Law Society's intervention.
21. Before the respondent had been aware of the Law Society's investigation, he had already set in motion the procedures to encash his pension fund. He had also made a number of payments in relation to the excess transfers in the case of Mrs F and in the case of Mrs P deceased. He had already made voluntary disclosure to the beneficiaries that he was in financial difficulties and that he had made excess transfers from the estate.
22. Effectively the respondent had practised on his own from 1982. He had been in practice as a solicitor for a long period of time. He had been a married man with five children. A matrimonial split had been followed by a financial crisis and the respondent had taken the steps he had in a desperate attempt to assuage his guilt about the splitting up of his family by ensuring that they did not suffer financially. In reality the respondent had "juggled" funds to make ends meet while supporting two families.
23. The respondent had sought to buy time from a financial point of view. He knew what he was doing was wrong and had to accept that what he did amounted to a form of dishonesty. That was, however, not the same as intending to deprive anyone of money. Everyone concerned had been reimbursed. The respondent would have repaid monies very much more quickly if it had not taken such a long time for his pension funds to be released.
24. The Tribunal was invited to recognise the extreme stress to which the respondent had been subjected which had led to his financial aberrations. It was hoped the Tribunal might be able to consider the suspension of the respondent from practice as a solicitor and that he might in the future be able to practise again.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal gave the respondent credit for responding to the application and for arranging

representation before the Tribunal. He was also given credit for the successful efforts he had made to ensure the replacement of client funds, repayments to the Law Society's Compensation Fund and the payment of the costs of intervention. However the Tribunal could not avoid the reality that even if the respondent had not stolen clients' monies, unauthorised borrowing was a blatant misuse of such monies and amounted to a serious breach of the trust which a client was entitled very properly to place in his or her solicitor. In addition the respondent had been guilty of false accounting and the Tribunal had no doubt that the respondent had acted dishonestly. It was right that the respondent should be struck off the Roll of Solicitors and should pay the costs of and incidental to the application and enquiry in an agreed fixed sum.

DATED this 2nd day of December 1996

on behalf of the Tribunal



A G Gibson
Chairman

