

IN THE MATTER OF PATRICIA ISABELLE LISSNER, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A.G Gibson (in the Chair)
Mr. J.C Chesterton
Mr. Dame Simone Prendergast

Date Of Hearing: 23rd June, 1998

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by Roger Field, solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on the 3rd October 1996 that Patricia Isabelle Lissner of Messrs. Carruthers & Co. of 239 Shaftesbury Avenue, London WC2 (her address subsequently notified to the Tribunal as Homer Drive, London E14) 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 of each of the following circumstances namely that she had:-

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

(iii) utilised clients' monies for her own purposes

The matter had been listed for hearing on the 8th April 1997 when the respondent applied for an adjournment. The respondent told the Tribunal that she considered the matter to be placed before them were res judicata and she wished to prepare a formal submission in that respect. She had intended to rely upon the evidence of her own account and needed time in order that the matter might be investigated further. In February of 1997 her social partner suffered a major stroke and required much of her personal attention. The respondent had been under much pressure and had not been able to devote sufficient time to or been able to concentrate upon the disciplinary proceedings. She was unable to afford representation.

The Tribunal expressed sympathy for the respondent's circumstances. She was very distressed when appearing before the Tribunal and it was concerned that she was not in a fit state to do herself justice. Otherwise the Tribunal considered that her application for adjournment had very little merit. The Tribunal encouraged the respondent to instruct a legal representative. They agreed to adjourn the matter for a hearing as close to six weeks ahead as could be arranged when the matter would proceed to a full hearing. The Tribunal made it plain that further adjournment would be very unlikely.

The matter was then listed for hearing on the 29th May 1997.

The respondent's legal representative had discussed with the applicant not only matters strictly relating to the facts in support of the application, but also the respondent's emotional fragility. The matter had not therefore been listed for hearing until June of 1998.

The application was heard at the Court Room No.60 Carey Street, London WC2 on the 23rd June 1998 when Roger Field solicitor and partner in the firm of In hedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included a letter sent by fax to the Clerk to the Tribunal on the 19th June 1998 by the respondent. This letter is set out in full under the heading "The submissions of the Respondent". The respondent had hitherto been represented by Mr Andrew Hopper of Cardiff and although the respondent was not represented at the hearing, the applicant was able to tell the tribunal that no evidence was in dispute.

At the opening of the hearing the applicant told the Tribunal that a supplementary statement had been lodged with the Tribunal and had been marked as disclosing a prima facie case. The applicant had attempted to serve the supplementary statement upon the respondent but had been unaware of her change of address. He was not in a position to assure the Tribunal that the document had been properly served and he expressed his intention not to seek to proceed with the allegation contained in the supplementary statement at the hearing. The Tribunal accepted that that was the proper course.

At the conclusion of the hearing the Tribunal Ordered that the respondent Patricia Isabelle Lissner formerly of Nr. Petworth, West Sussex (also formerly of Messrs. Carruthers & Co, 239 Shaftesbury Avenue, London WC2 but subsequently notified to be of Homer Drive, London E14) solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 23rd day of June,

1998 and they further Ordered that she pay the costs of and incidental to the application and enquiry fixed in the sum of £8,757.70 inclusive.

The facts are set out in paragraphs 1 to 24 hereunder:-

1. The respondent (born in 1937) had been admitted as a solicitor in 1962. Until the 31st December 1990 the respondent carried on in practice on her own account under the style of Lissner & Co at Sovereign House, 212-224 Shaftesbury Avenue, London WC2. Thereafter she had been employed as a solicitor enjoying the status of an associate by Messrs. Carruthers & Co of 239 Shaftesbury Avenue, London WC2 as she had continued to maintain the client account in relation to her former practice of Lissner & Co.
2. Following due notice to the respondent the Investigation Accountant of the Solicitors Complaints Bureau (as it then was) carried out inspections of the respondent's books of account. The Tribunal had before it copies of the Investigation Accountant's reports respectively dated the 9th December 1992 and the 19th December 1994.
3. The first report revealed that the respondent's books of account were not in compliance with the Solicitors Accounts Rules.
4. A list of liabilities to clients as at the 31st August 1992 was extracted from the clients' ledger by the Investigation Accountant. A comparison of its totals with cash held on clients' bank account at that date (6p) revealed a cash shortage of £19,107.02.
5. On the 15th October 1992 the respondent transferred £557.57 from office to client bank account in part rectification of the shortage. She was unable to replace the balance of the shortage.
6. It was the respondent's contention that, included in the total liabilities to clients of £19,107.08, there were balances totalling at £12,996.30 relating to undrawn costs. She indicated that she would make the required book-keeping entries in order partly to rectify the remaining shortage of £18,549.45.
7. The cash shortage arose in the following way:-

i)	Overpayments	14,005.93
ii)	Personal payment	7,561.33
iii)	Book difference (shortage)	<u>539.76</u>
		<u>22,107.02</u>
iv)	Less: Excess funds transferred from office to client bank account to rectify earlier shortage in existence at 31st October 1989	<u>3,000.00</u>
		<u>19,107.02</u>
8. During the period of 22nd March 1990 to the 20th August 1992 overpayments varying in amount between £185.33 and £4,535.50 had been made on account of six clients.

The largest overpayment had been attributed to error by the respondent but the Investigation Accountant noted that the shortage had been in existence for over two years. A further debit balance set out by way of example by the Investigation Accountant (£4,044.34) had arisen when the relative clients' ledger had been charged with a client bank account payment in respect of a transfer to office bank account £4,152 when it was in credit by only £107.66. The respondent attributed the debit balance to error but the Investigation Accountant had reported that the shortage had been in existence for over two years.

9. On the 31st January 1991 client bank account had been charged with a payment of £7,561.33 which had not been allocated to any account in the clients' ledger. The respondent agreed with the Investigation Accountant that the payment was of a personal nature and no funds were held in client bank account out of which that fund could properly have been paid. The payment had been for the employment of temporary staff and the cheque had been drawn on the client account in error.
10. The Investigation Accountant went on to report a possible shortage in the estate of Dr S R G Deceased. The respondent's firm acted for the sole executrix. Total receipts on account of the estate to the 31st August 1992 amounted to less than £200,000. During the period 5th June 1987 to 2nd November 1989 the relevant client's ledger account was charged with twelve transfers from client bank account to office bank account varying in amounts between £690.00 and £3,000.00 and totalling £22,491.30. The respondent produced three bills totalling £4,976.80 relating to the estate. The Investigation Accountant reported that the excess transfers were improper as no bills or other written intimations had been delivered to the executor client. The respondent had explained to the Investigation Accountant that the matter had been handled by her father whom she had employed as a legal executive and that she had some bills still to prepare. On the 19th November 1992 the respondent forwarded copies of undated bills addressed to the executrix totalling £22,980.70.
11. The second Investigation Accountant's report of December 1994 again revealed that the respondent's books of account were not in compliance with the Solicitors Accounts Rules.
12. A list of liabilities to clients as at 31 March 1994 was produced for inspection. The items were in agreement with the balances in the clients' ledger and totalled 19,873.38. A further liability to a client of £2,685.25 existed which was not shown by the books. The total liabilities to client were therefore £22,558.63 and compared with cash available of £557.63 revealed a cash shortage of £22,001.00.
13. On the 12 May 1994 the respondent had paid outstanding Counsel's fees in the sum of £2,685.25 in part-rectification of the shortage. She was unable to replace the balance of the shortage of £19,315.75. She contended that included in the total liabilities to clients of £19,873.38 shown by the books, there were credit balances totalling £9,211.45 which related to undrawn costs. She said that she would make the required book-keeping entries in order further to partially rectify the remaining shortage.
14. The cash shortage had arisen in the following way:-

i)	i)	Overpayments	13,576.66
	ii)	Unallocated Transfers from Client to office bank account	13,341.81
	iii)	Personal payments	16,871.33
	iv)	Funds improperly retained in office bank account in respect of unpaid Counsel' fees	<u>2,685.25</u>
			46,475.05
	iv)	Less: Bank interest improperly retained in client bank account	<u>3,228.77</u>
			43,246.28
	v)	Less: Book difference (Surplus)	<u>21,245.28</u>
			<u>22,001.00</u>

15. During the period 20th November 1989 to 27th August 1992 overpayments varying in amount between £53.30 ad £4, 535.54 and totalling £13,576.66 had been made on account of six clients. The Investigation accountant exemplified the two largest overpayments (which were the same two matters referred to in the earlier Investigation Accountant's report and are set out above.) Between the 1st June 1998 and the 6th March 1990 four transfers varying in amount between £1,115.41 and £6,000.00 and totalling £13,341.81 had been made from client to office bank account but had not been allocated to any individual account in the clients' ledger. The respondent said that she was not able properly to allocate any of these transfers without further investigation but her Reporting Accountant indicated that they might have related to costs taken in connection with the affairs of Ms C.
16. With regard to the personal payments, on the 18th January 1990 and the 31st January 1991 client bank account had been charged inter alia with payments of £9,310.00 and £7,561.33 respectively which had not been allocated to any individual account in the clients' ledger. The figure of £7,561.33 had been dealt with in the earlier Investigation Accountant's report. The respondent agreed that the payments were of a personal nature and no funds were held in client bank account out of which they could properly have been made. She said she thought that the payment of £9,310.00 was the repayment of a loan made to her by Mr E for whom she had acted in connection with a property matter.
17. The respondent had held the sum of £2,685.25 in office account. An identical figure of Counsel's fees remained unpaid in the matter of a legally aided client in which taxed costs, including Counsel's fee in the same sum, were recovered from the solicitors acting for the other party. The resulting shortage was rectified by an appropriate payment to Counsel on the 12th May 1994.
18. A major part of the book difference (surplus of £21,245.28) related to movements on a client's designated deposit account which the respondent had instructed her Reporting Accountant to investigate. In connection with that matter the respondent had acted for a Ms C in connection with the administration of her late mother's estate. On the 15th February 1988 funds of £20,000 held in a designated deposit account for that client had been transferred into a general client deposit account and subsequent transfers,

totalling £20,000 from that account into client bank account had been made between 16th March and the 2nd September 1988. It appeared that no entries had been made to record those movements of funds in the relevant client ledger account.

The Submissions of the Applicant

19. The personal payment which appeared on the face of it to be serious matter was accepted by the applicant to have been an error on the part of the respondent. In his submission it was characteristic of the confusion of the respondent in relation to her books of account.
20. It was right also that bills to clients might have been prepared and it was further symptomatic of the chaos and confusion that such bills had not been submitted to the clients concerned. There was no allegation and indeed no suspicion that the bill or bills rendered by the respondent had been anything other than entirely reasonable.
21. In the submission of the respondent it was impossible not to reach a conclusion that the respondent's books of account were in a mess. The respondent had indicated that a degree of blame had to be levelled at her book-keeper. The second of the Investigation Accountant's reports before the Tribunal showed that the problems had not been put right. The Tribunal had before a copy of the exchange of correspondence which had taken place between the applicant and the respondent's legal representative. It could not be denied that the chaotic state of affairs which had existed in 1990 had not been put right.
22. The applicant was able to accept that the problems revealed by the Investigation Accountant's reports had at the time of the hearing been put right. He was further able to accept that some of the problems had been of a historical nature. He was able to report to the Tribunal that the respondent had filed an Accountant's report in a form which was satisfactory. The matter had been concluded after the respondent had been put to much time and expense and that should go to her credit.
23. It was accepted that no claim had been made upon the Law Society's Compensation Fund and when matters had been finally concluded there had been no evidence that a real shortage had existed on the respondent's client account. Because of the state of the books the chaos and the muddle, in the submission of the respondent, that happy state of affairs was the result of luck rather than judgement. The matter was not, however, one involving dishonesty on the part of the respondent.
24. In the submission of the applicant the respondent had been singularly ill-equipped to practise on her own account. She had a clear duty to keep proper and accurate books of account and should error have occurred she had a clear duty to make sure that the books were put right.

The Submission of the Respondent (her letter of the 19th June 1998 referred to above)

25. "I have been advised of the restored hearing of the complaint against me on Tuesday next 23rd June.

I cannot afford continued representation.

For medical reasons of which the Tribunal has been made aware I shall not be able to control my emotions particularly if further wrong and misleading statements are made in cross examination, as previously occurred causing myself and my partner, a sick man, harassment, considerable distress and damage to health. Under the circumstances I do not propose to attend."

The Findings of the Tribunal

The Tribunal Found the allegations to have been substantiated.

On the 10th January 1991, the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances namely that she had:-

- (i) drawn from client account money other than as permitted by Rule 7 of the Solicitors Accounts Rules 1986, contrary to Rule 8 of the said Rules.
- (ii) utilised clients' monies for her own purposes
- ii) practised as a solicitor without a current practising certificate since October 1987.
- iv) practised as a solicitor having failed to pay professional indemnity contributions as required for the twelve months period commencing on the 1st September 1987, 1st September 1988 and 1st September 1989.

On that occasion the Tribunal had been pleased to learn that the respondent had entered into an arrangement with a nearby firm. That was obviously a desirable and necessary step for her to take and indeed if she had not already done so the Tribunal would then have felt bound to make such recommendation to the Law Society. The Tribunal took note of the fact that the respondent had suffered profoundly from a very serious brain injury but had managed to ensure that her clients had not suffered. Although the responsibility for her firm's accounts remained firmly with her, she had been let down by her book-keeper. Immediately deficiencies were made known she put them right at her own expense. Notwithstanding the serious nature of the allegations made against the respondent the Tribunal felt it was right to adopt a lenient view on that occasion and ordered the respondent to pay a penalty of £1,000.

On the 20th April 1993 the Tribunal Found an allegation that the respondent had failed to comply promptly or at all with a decision of the Assistant Director of the Solicitors Complaint Bureau (as it then was) concerning a refund of costs.

The Tribunal Found that the allegation against the respondent on that occasion was rather different from the earlier matters. The Tribunal considered the respondent had failed to comply promptly with the decision of the Assistant Director of the Solicitors

Complaints Bureau (rather than a complete and utter failure) and recognised that her attempts to comply had been thwarted, first by having a bankruptcy order made against her and secondly by a beneficiary, M H M, being also a private client for whom the respondent had conduct of other matters. The respondent was very foolish indeed not to make her situation absolutely plain to the Solicitors Complaints Bureau and the Tribunal considered that to a large extent the respondent had been the author of her own misfortune following her failure to respond promptly to letters addressed to her by the Bureau. The Tribunal adopted the submission of the applicant in that matter that any non-compliance by a solicitor with the machinery designed to promote and maintain the public's confidence in the solicitors' profession was reprehensible.

The Tribunal ordered the respondent to pay a fine of £1,000 and further ordered her to pay the applicants costs in a fixed sum.

In June of 1998, it was a matter for grave concern to the Tribunal that it was dealing with the third set of allegations against the respondent. The Tribunal accepted that the respondent had not been guilty of dishonesty. They gave the respondent credit for having put matters right. The respondent herself, as had been evident from the earlier adjournment of the substantive hearing, told the Tribunal that for medical reasons she would not be able to control her emotions before the Tribunal. The Tribunal considered it right to make an order suspending the respondent from practice for an indefinite period of time. The Tribunal would not favourably entertain an application for the determination for that period of suspension unless the respondent was able to place clear and unequivocal evidence before the Tribunal that she had regained her mental equilibrium and was again fit to practise as a solicitor. In the circumstances it was right that the respondent should pay the applicant's costs including the very substantial costs of the Investigation Accountants of the Law Society. The Tribunal's award of costs was in a fixed sum.

DATED this 7th day of August 1998

on behalf of the Tribunal

A G Gibson
Chairman

