

IN THE MATTER OF WILLIAM FRANCIS HIGGINS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K I B Yeaman (in the Chair)
Mr. D W Faull
Dr. Z U Khan

Date Of Hearing: 20th May 1997

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 28th November 1996 that Williams Francis Higgins of Messrs. W F Higgins & Co. at 3 Queens Park Road, Caterham, Surrey, 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.

On the 16th January 1997 the applicant made a further statement containing additional allegations. The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the respondent:-

- (i) failed to deliver an accountant's report in accordance with section 34 of the Solicitors Act 1974 and the rules made thereunder;
- (ii) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
- (iii) drew money from a client account other than as permitted by Rule 7 of the said Rules and contrary to Rule 8 of the said Rules;

- (iv) utilised clients' funds for his own purposes;
- (v) had been guilty of unreasonable delay in the conduct of professional business;
- (vi) had been responsible for unreasonable delay in the dealing with clients' affairs;

and that by reason of the matters (i) to (vi) he had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 20th May 1997 when Roger Field solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent.

At the conclusion of the hearing the Tribunal made the following Orders. If the respondent does file his accountants reports which are outstanding with the Law Society within 28 day of the 20th May 1997 the Tribunal ORDER that the respondent William Francis Higgins of Messrs. W F Higgins & Co., 3 Queens Park Road, Caterham, Surrey, Solicitor do pay a fine of £1,000 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,213.00. That order was expressed to be in place of that ordering the respondent to be suspended from practice for an indefinite period.

If the respondent did not file his Accountant's Reports which were outstanding with the Law Society within 28 days of the 20th May 1997 the Tribunal ORDERED that the respondent William Francis Higgins of Messrs. W G Higgins & Co., 3 Queens Park Road, Caterham, Surrey, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th June 1997 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,213.00.

The facts are set out in paragraphs 1 to 15 hereunder.

1. The respondent, born in 1956, was admitted a solicitor in 1980. At the material times he practised on his own account under the style of W F Higgins & Co., at 3 Queens Park Road, Caterham, Surrey.
2. The Solicitors Complaints Bureau (the predecessor of the Office for the Supervision of Solicitors and is hereinafter referred to together with the Office as "the Office") wrote to the respondent on the 19th February 1996. The Law Society's records revealed that the respondent's accountant's report for the period ending the 15th April 1995 had not been received and his explanation under warning was sought. He did not respond and on the 19th June 1996 the Bureau wrote to him again enclosing a copy of the relevant committee report.
3. The appropriate Law Society Committee considered the matter on the 7th August 1996 when they decided to rebuke the respondent for his late delivery of an Accountant's Report and required the respondent to file that relating to the year ending 15th April 1995 within 28 days of being notified of the decision. Such notification was

given by letter of the 15th August 1996. The respondent still had not filed that Accountant's Report.

4. The respondent further had failed to file his Accountant's Report relating to his financial period ending on the 15th April 1996.
5. Upon due notice to the respondent an Investigation Accountant of the Office carried out an inspection of his books of account. The inspection began on the 19th September 1996. The Investigation Accountant's Report dated the 17th October 1996 was before the Tribunal. It revealed that the respondent's books of account were not in compliance with the Solicitors Accounts Rules. When the Investigation Accountant first attended at the respondent's office on the 19th September 1996 the respondent admitted that his books of account contained entries no later than the 15th April 1994 and he believed that a shortage of approximately £4,500 existed on client bank account. He agreed to rectify the shortage and to have his books of account written up by the 23rd September 1996.
6. An Investigation Accountant attended again upon the respondent on the agreed date, 23rd September 1996, when the books of account were written up only until February 1995. When he attended again on the 26th September the books were written up to April 1996 and the respondent said he had identified a further shortage of about £1,500 on client bank account. When the Investigation Accountant attended again on the 30th September 1996 the books had been written up to the 31st August 1996.
7. The respondent explained that his accountants prepared only four sets of client bank and client ledger reconciliations for the period between 15th April 1994 and the 31st August 1996 as at the following dates: 31st July 1994, 15th April 1995, 15th April 1996 and 31st August 1996.
8. A list of liabilities to clients as at 31st August 1996 was produced for inspection and totalled after adjustment £204,964.04. The items were in agreement with the balances shown in the clients ledger but did not include further liabilities totalling £3,115.04 in respect of clients' funds improperly retained in office bank account. All liabilities when compared with cash held in client bank account as at the 31st August 1996, after allowance for uncleared items, revealed a cash shortage of £8,855.87.
9. The cash shortage was partially rectified during the inspection by receipt of funds totalling £5,785.77 from the respondent. The cash shortage arose in the following way:-

(i)	Overpayments	£5,760.77
(ii)	Clients' funds improperly transferred from client to office bank account	2,747.50
(iii)	Office expense met from client bank account	267.54
(iv)	Clients' funds improperly retained in Office bank account	100.00
(v)	Bank charges	<u>25.00</u>
		£8,900.81
(vi)	Unallocated receipts	<u>(44.94)</u>
		<u>£8,855.87</u>

10. During the period between 15th September 1993 and 21st May 1996 overpayments varying in amount between £5.00 and £3,190.85 had been made in respect of ten client matters. Those overpayments, examples of which were before the Tribunal, were attributed by the respondent to the fact that his books had not been properly written up or that there had been an arithmetical error, the respondent had not offered any explanation in respect of another.
11. During the period between the 17th January 1994 and the 15th December 1995 client bank account had been charged with six transfers to the office bank account varying in amount between £125.00 and £699.50 and totalling £2,747.50 in respect of five client matters when no bills or written intimation of costs had been prepared or delivered. The respondent contended that the transfers were in respect of costs due to the firm but he confirmed he would return the funds to client bank account and deliver proper bills.
12. The Investigation Accountant went on to report another matter concerning the estate of Miss MAM deceased in which the respondent acted as sole executor. Miss MAM deceased died on the 10th May 1992 leaving an estate valued for probate purposes of £100,000 net.
13. On the 26th October 1993 the relevant account in the clients ledger was charged with a transfer of £6,250.00 to the client ledger account of Mr and Mrs M, unconnected clients, for whom the respondent acted in connection with a conveyancing transaction. A physical movement of the funds was effected from an executor's bank account held for Miss MAM's estate to the firm's client account.
14. The respondent said that the transfer was in connection with a loan of a like amount from the estate to Mr and Mrs M to enable them to complete their conveyancing transaction. The loan was repaid on the 14th September 1994 together with interest. The respondent said he had prepared a charge deed dated the 26th October 1993 which Mr and Mrs M had signed offering their property as security for the loan. The deed had not been registered at HM Land Registry in order, the respondent indicated, to save costs. Mr and Mrs M had not been advised to seek independent financial advice. The respondent said he had discussed the matter with the residuary beneficiary of the estate, The Investigation Accountant offered some criticism of the respondent's dealings with the matter. Costs in the sum of £3,750 had been transferred to office account when no bills or written intimations of costs had been prepared. The respondent indicated that the residuary beneficiary had been content with the quantum of his costs.
15. The Investigation Accountant went on to report that a number of the respondent's files had been reviewed. There were a number of conveyancing matters where transfers on behalf of purchasers and mortgages on behalf of lenders had not been registered with HM Land Registry.

The Submissions of the Applicant

16. The applicant did not allege that the respondent had been dishonest. There was no suggestion that he had gone out of his way deliberately to take money which did not belong to him. He had however in reality taken money. The respondent's clients would have been ignorant that their money was going into the respondent's office account. The Tribunal was reminded of the fundamental philosophy lying behind the

Solicitors Accounts Rules namely that there should be a rigid distinction between the solicitor's own money and that of his clients. There were two main bastions against claims on the Law Society's Compensation Fund, the first was a punctilious adherence to the provisions of the Solicitors Accounts Rules and the prompt filing with the Law Society of an accountant's report.

17. At the date of the hearing the filing of two Accountant's Reports with the Law Society remained outstanding.
18. There had been serious breaches of the Solicitors Accounts Rules which straddled a long period of time. During that period it had not been possible conveniently to ascertain how much money was due to the respondent's clients.
19. The degree of dereliction of duty of the respondent meant that he could never be certain of how much money was due to a client or how much was due to him.
20. The respondent's delay in attending to Land Registry registration on the completion of conveyancing matters were self evidently serious. The interests of his private and his institutional clients were not properly protected. Indeed the respondent had been guilty of an abstention from his responsibilities to those important institutional clients. He had not given any explanation. It was behaviour of the kind brought before the Tribunal that could only bring the solicitors' profession into disrepute. The respondent was an experienced solicitor who ought to have known better than to fail to fulfil the most elementary of requirements.

The Submissions of the Respondent

21. The respondent was ashamed of his conduct and apologised. The respondent admitted the allegations which he agreed were serious.
22. In all but one matter where transfers had been made from client to office bank account in respect of costs the clients had received quotations. The respondent accepted that he had not followed the proper procedure but those clients had not been surprised by the transfer or the quantum of the costs.
23. With regard to the late attention to the registration of conveyancing transactions the respondent had subsequently attended to all such matters.
24. The respondent had not behaved dishonestly. He had undertaken too much on his own and had tried to be a "jack of all trades". The respondent had arranged his affairs in such a way that he would be able to undertake his practice as a solicitor properly.
25. The respondent recognised that the Tribunal would impose a penalty. The respondent had to support his family and any penalty would prove painful.
26. The respondent said that he anticipated being able to file the outstanding Accountant's Reports within a short period of time after the hearing.

The Tribunal's Findings

The Tribunal FOUND the allegations to have been substantiated.

The Tribunal wished to express considerable concern about the respondent's clear inadequacies. They consider it must seriously be questioned whether the respondent is a suitable person to practise as a sole practitioner. He had exhibited an extraordinary and unsatisfactory disregard for the Solicitors Accounts Rules. Despite the rebuke and reminders from the Law Society he had failed to file two Accountant's Reports. The Tribunal accept that dishonesty was not alleged against the respondent. That being the case he has behaved in a stupid and unprofessional manner. He has been very casual about taking clients' money for costs. The Tribunal recommend to the Law Society that the respondent should not be permitted to continue to practise as a sole principal.

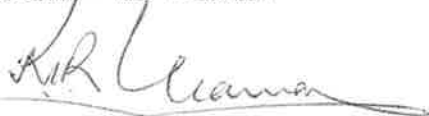
The Tribunal was anxious to ensure that the respondent take every possible step to file his outstanding Accountant's Reports. To that end they took the unusual step of making alternative orders. The Tribunal ordered that if the respondent did not file his outstanding Accountant's Reports within 28 days of the date of the hearing then he would be suspended from practice indefinitely. If the respondent did not bring himself into line he would in fact be in continuing breach and it would be wholly inappropriate that he should be permitted to continue to practise as a solicitor in such a circumstance.

However if the respondent did file his outstanding Accountant's Reports within 28 days of the hearing the Tribunal ordered that he should pay a fine of £1,000.

The Tribunal ordered that the respondent should pay the costs of the Law Society in bringing the enquiry and application before the Tribunal to include the costs of the Investigation Accountant which costs totalled £3,212.00. The Tribunal fixed the fine at that level having learned from the respondent that his income from his practice was modest, otherwise they would have been minded to impose a fine of a higher order.

DATED this 16th day of September 1997

on behalf of the Tribunal



K I B Yeaman
Chairman

*Findings filed with the
Law Society on the 23rd
day of September 1997*