

IN THE MATTER OF NIGEL ROBERT RICHARDSON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Ground (in the chair)
Mr. J C Chesterton
Mr. D E Marlow

Date of Hearing: 10th January 2002

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 ("OSS") by David Elwyn Barton solicitor and partner in the firm of Whitehead Monckton of 72 King Street, Maidstone, Kent ME14 1BL on the 11th July 2001 that Nigel Robert Richardson of Penarth, South Wales, 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.

The allegations were that the Respondent had:-

- a) dishonestly, alternatively improperly utilised clients' money for his own purposes;
- b) acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors' Accounts Rules 1998) he has drawn from clients account moneys other than in accordance with the said Rules and utilised the same of his own benefit;
- c) has been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when by David Elwyn Barton solicitor and partner in the firm of Whitehead Monckton of 72 King Street, Maidstone, Kent ME14 1BL appeared as the Applicant and the Respondent was represented by David Morgan solicitor on 9 Grays Inn Square, London, WC1R 5JF

The evidence before the Tribunal included the oral evidence of the Respondent and testimonials in his support handed up at the hearing.

The facts are set out in paragraphs 1 to 12 hereunder: -

1. The Respondent, born in 1947, was admitted as a solicitor in 1973. At the material times he practised as a salaried partner in the firm of Messrs Howells at Hallinans House, 22 Newport Road, Cardiff.
2. An inspection of the books of account of Messrs Howells was carried out by the Monitoring & Investigation Unit of The Law Society. The investigation had started on the 18th May 2000. The Report of the Monitoring & Investigation Officer ("MIO") dated 4th September 2000 was before the Tribunal.
3. The report recorded an interview by the MIO of the senior partner at Messrs Howells who indicated that a discrepancy on one of the Respondent's conveyancing matters had been discovered during his absence from the office owing to illness. The firm's investigations revealed that there were certain withdrawals recorded on the ledger which initially the Respondent was unable to explain. Subsequently the Respondent had admitted that he had taken money to pay a personal credit card bill. Further enquiries had revealed further misuse of clients' monies by the Respondent. The firm had replaced the shortfalls identified. The Respondent himself had been interviewed by the MIO on the 3rd August 2000 when he admitted that he had misused one client's funds for his own benefit and he had made further payments from clients' funds when they had not been made specifically aware of those payments.
4. The Report indicated that a minimum cash shortage on client account of £12,635.27 had arisen entirely due to the Respondent making personal payments during the period 8th July 1996 to the 14th December 1999 from client bank account. The details were as follows:-

<u>Date</u>	<u>Payee</u>	<u>Client Ledger Account Charged</u>	<u>Total</u>
(a) 08.07.96	National Westminster Bank plc	M	£2,000.00
(b) 08.07.98	- ditto -	V	2,500.00
(c) 11.01.99	- ditto -	G	567.10
(d) 14.01.99	- ditto -	R	2,556.26
(e) 10.06.99	- ditto -	R	3,000.00
(f) 24.08.99	Royal Bank of Scotland	G	500.00
(g) 14.12.99	- ditto -	B	<u>1,511.91</u>
			<u><u>£12,635.27</u></u>

5. The payment to Royal Bank of Scotland of £1,511.91 charged to the client ledger account of B was applied for the payment of the Respondent's credit card.
6. In the matter of M and the payment to National Westminster Bank of £2,000 this had arisen in connection with the estate of M who had died in 1994. His executors were the Respondent and Mr M. There had been nine specific requests to individuals of £10,000 each and two specific requests to a school and a church for £1,000 each in the late Mr M's will. The residue was then to be split equally between the Respondent and the other executor. The nine individual beneficiaries had received amounts totalling £5,500 each but the legacies to the school and the church had not been paid. The Respondent confirmed that the payment of £2,000 on 8th July 1996 had been made to him personally and he paid it into his own bank account at National Westminster Bank. He had not referred to his co-executor in making that payment and it was an amount "on account" of what he believed would be due in the matter or what would be due to him as a residuary beneficiary.
7. In March 2000 in a letter to Messrs Howells the other executor stated:-

"..... it seems unlikely that there will be sufficient assets to pay the pecuniary legacies in full so that I would not anticipate that there will be any legacy for the residuary beneficiaries.
8. The Respondent at the time he made payment to himself for £2,000 had been under the mistaken impression that the eventual estate fund would allow for this but as time went on and the house sale failed to materialise, the Respondent had come to realise he should have refunded the same which he failed to do. In evidence the Respondent told the Tribunal that at the time he made the transfer of £2,000 to himself there had been no question in his mind that the size of the estate was insufficient to ensure that the residuary beneficiaries would receive a payment.
9. With regard to the payment to National Westminster Bank of £2,500 on the 8th July 1998 this amount was charged to the client ledger account of V. Miss V had died in September 1991. The conduct of the administration of the estate had been begun by the Respondent at his earlier firm. The sum of £2,500 had been paid into the Respondent's personal bank account. The Respondent said he believed at the time that the sum represented costs due for work carried out some years earlier before he had joined Messrs Howells. The Respondent accepted that had that been the case the money was due to his former firm and not to him personally.
10. The other payments totalling £6,623.36 charged to the ledger accounts of R/A and G related to payments made either to the Respondent's personal National Westminster Bank account or to his personal credit card account at the Royal Bank of Scotland.
11. The Respondent had told the MIO that the clients R/A had been clients for many years and he had given them advice over a long period prior to his joining Messrs Howells. He had advised them over a long period of time going back to the 1970's for which he had not billed. The withdrawals totalling £5,556.26 were in respect of fees due to him personally for advice he had given. He confirmed that at the time he had made the personal payments he had not delivered either a bill or any written

intimation of costs nor had he informed his clients that he was going to use their funds in that way.

12. In respect of the client G the Respondent said he had carried out work for that client under a Power of Attorney as the client was abroad. He explained that the work which he carried out was not strictly legal work and he had it carried out in his own time and had not billed for it. He said that the withdrawals totalling £1,067.10 were in respect of fees due to him personally for work he had undertaken.

The Submissions of the Applicant

13. The Applicant put the matter before the Tribunal as a dishonesty case. The Respondent had admitted the facts and the allegations and that his actions had been improper, but he did not admit that he had been dishonest.
14. The Respondent had not been guilty of any momentary lapse. The improper withdrawals of clients' funds had occurred over a period of time. The Respondent's conduct had been advertent and there was nothing to suggest that his judgement had been clouded by any surrounding circumstances. A number of withdrawals had been made from client account. The Tribunal would note that some had subsequently been ratified by the clients concerned. The Tribunal was invited to note in particular the sum of £1,511.91 which had been utilised by the Respondent to pay his personal credit card account at the Royal Bank of Scotland. The payment had been charged to the client ledger account of B and the payment made had no connection whatsoever with the affairs of that client.

The Submissions of the Respondent

15. The Respondent had made a clean breast of matters and the Tribunal was invited to give him credit for that. He had appeared before the Tribunal to apologise to his profession for his lapses and to explain that when he did the acts complained of he did not fully appreciate how wrong they were. With the exception of the payment charged to the client ledger account of B the Respondent had taken money on the basis that he would repay that money in a few weeks time. He did so. He expected that should he be permitted to continue in practice then he would be required to do so in approved employment. The Respondent still had much to offer the solicitors' profession. The Tribunal was invited to give the Respondent credit for his hitherto long unblemished career.
16. The Respondent had made good the shortfall established on client account save for £2,500 which he would undertake to discharge when his house was sold. At the time of the hearing the house was on the market and the Respondent anticipated the realisation of a substantial equity.
17. The Tribunal was invited to give due weight to the testimonials put in in support of the Respondent.
18. The Respondent denied that he dishonestly utilised clients' money for his own purposes. Monies which were transferred to the Respondent were in fact monies which he considered were due to him in respect of costs or in one instance an

entitlement under an estate. The Respondent fully accepted that he failed to render any bill for the costs element and for that reason admitted that those transfers were improper.

19. When the Respondent began his employment with Howells it was extremely run down. He took with him a great number of files, numerous clients and a reputation within the area.
20. For the next few years, the Respondent successfully built up the conveyancing side of the practice. In due course the Respondent was moved to the firm's head office in Cardiff. Within approximately twelve months the Respondent was asked to transfer to another branch office which needed rejuvenating.
21. On the 13th January 2001 the Respondent attended a meeting with the three equity partners in the firm who asked him to resign as a salaried partner on the grounds of ill health.
22. At the material time the Respondent had been subject to severe financial pressure caused by worry. He knew that the £1,511.91 charged to B would not be required in the immediate future and he always intended to replace it before it was needed, which he did. On 11th January 2000 he had come to realise that he should never have touched that money but at the time due to stress and illness he had been quite incapable of thinking rationally.
23. As at the end of February 2000, the clients R/A retrospectively ratified the Respondent's withdrawals of £5,554.39. The payment charged to G was ratified by the client on 29th March 2000.
24. In the matter of the M deceased the Respondent had taken £2000 in the sincere belief that this was part of his entitlement as a residual legatee. It had been repaid and the estate had been wound up. At no time did the Respondent's fellow executor, a chartered accountant, query his actions or make any complaint.
25. In the matter of V deceased the Respondent had dealt with this estate almost entirely prior to his employment by Howells. The residue of estate monies had been transferred to his employers' client account and upon reviewing the file somewhat belatedly the Respondent had realised that although some interim bills had been rendered no final up to date account had been undertaken which was why he took £2,500 in costs.
26. The Respondent was truly sorry for what he had done and deeply regretted his actions and the problems they had caused. The previous two years had been a trial and tribulation in themselves. The Respondent offered every assurance to the Tribunal that the disciplinary proceedings had been a severe lesson to him and under no circumstances would there be any recurrence of such breaches in the future.

The Findings of the Tribunal

The Tribunal have found the allegations to have been substantiated and do find that the Respondent had been dishonest. The Tribunal take the view that the Respondent

had been guilty of conscious impropriety in particular when he took money belonging to the client B in order to pay his personal indebtedness on a credit card.

In reaching that conclusion the Tribunal had applied the test in *Royal Brunei Airlines -v- Tan* (Privy Council 1994). Even where the payments had subsequently been ratified or where the Respondent had anticipated a legacy which turned out not to be available his attitude to the handling of clients' money was wholly unsatisfactory. It is fundamental to the practice of the profession as a solicitor that money held by that solicitor on behalf of clients is sacrosanct.

The Respondent's failures where he might not be said to have been dishonest were at the most serious end of the scale and the finding of dishonesty against him leads the Tribunal to conclude that in exercise of its first duty to protect the public and its second duty to preserve the good reputation of the solicitors' profession it was right that the Respondent be struck off the Roll of Solicitors.

The Tribunal so ordered and further ordered the Respondent to pay the costs of and incidental to the application and enquiry fixed in the sum of £4,968.75 inclusive.

DATED this 5th day of March 2002

on behalf of the Tribunal

A G Ground
Chairman