

IN THE MATTER OF PETER ALAN CECIL GILLIS, solicitor

AND

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. W M Hartley (in the chair)
Mr. L N Gilford
Mr. M G Taylor CBE

Date of Hearing: 21st November 2001

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 (the OSS) by Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke Potter and Chapman of 2 Putney Hill, Putney, London SW15 6AB on 19th July 2001 that Peter Alan Cecil Gillis solicitor of Great Portland Street, London W1 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.

At the opening of the hearing the applicant informed the Tribunal that he had reached an agreed position with Counsel representing the respondent and that he would not proceed with allegations (b), (c), (d) and (e). The Tribunal consented.

The allegations before the Tribunal were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (a) that he had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 (the 1991 Rules) or for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (b) not proceeded with;
- (c) not proceeded with;

- (d) not proceeded with;
- (e) not proceeded with;
- (f) that he had deliberately and improperly utilised clients' funds for his own purposes;
- (g) that he had failed to comply to the Solicitors Indemnity Rules 1998 by failing to pay promptly the Solicitors Indemnity Fund contributions for the indemnity year 1999/2000. (This allegation was amended as it was common ground that the premiums had been paid by the date of the hearing);
- (h) that he had failed to comply with the Solicitors Indemnity Insurance Rules 2000 by failing to pay promptly or at all the premiums payable to the Assigned Risks Pool for the indemnity year 2000/2001.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Ian Paul Ryan solicitor and partner in the firm of Messrs Russell Cooke Potter and Chapman of 2 Putney Hill, Putney, London SW15 6AB appeared as the applicant and the respondent was represented by John Robson of Counsel.

The evidence before the Tribunal included the admissions of the respondent, exhibit "PACG 1", a medical report, exhibit "PACG 2", a schedule of work in progress prepared by the Law Society's intervention agents and "PACG 3", copy letter dated 27th April 2001 addressed by the respondent to the OSS.

At the conclusion of the hearing the Tribunal ordered that the respondent Peter Alan Cecil Gillis solicitor of Great Portland Street, London W1 solicitor be Struck Off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry made up of the costs of the Investigation Accountant of the Law Society fixed at £6,715.35 and the applicant's costs to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 18 hereunder:-

1. The respondent, born in 1939, was admitted as a solicitor in 1963. At the material times he practised on his own account under the style of Peter Gillis & Co., solicitors at Great Portland Street, London W1.
2. Following notice duly given to the respondent the Investigation Accountant of the Law Society carried out an inspection of his books of account. The inspection began on 14th February 2001. The Investigating Accountant's Report dated 30th March 2001 was before the Tribunal.
3. The Report revealed that at the date of inspection the respondent's office bank account had a debit balance of £23,736.22. The books of account were not in compliance with the Solicitors Accounts Rules as the clients' cash book, although containing entries for January 2001, had not been reconciled to bank statements later than 31st December 2000. The firm had carried out the necessary work during the course of the inspection to reconcile client bank account to the 31st January 2001.

4. With regard to the position on reconciliation statements the Investigating Accountant's Report set out the following:-

5. Reconciliation Statements

It was noted that the firm's office records showed the following position at the commencement of the inspection:-

- Office cash book, although containing entries to January 2001, had not been reconciled to bank statements later than 30th June 2000.
- A review of the firm's reconciliation as at 30th June 2000 revealed that twenty seven receipts into office bank account, totalling £108,460.02, had not been allocated to the office column of any individual account within the clients' ledger. In each instance it was noted that the reconciliation statement indicated that the funds received related to the payment of costs for which no bills had been prepared.
- The reconciliation statement contained at least one hundred and sixteen cheques totalling £61,063.37 which had not been presented for payment.

6. During the inspection, Mr Thomsett (*the Investigating Accountant*) was provided with a print out of the firm's outstanding office account cheques as at 8th January 2001 extracted from the firm's accounting software. Following a detailed review of this print out, Mr Thomsett discovered that one hundred and twenty four of these cheques were over six months old and they represented the payment of professional disbursements the cheques for which had been issued as early as 19th December 1995. Having reviewed the relevant client matter files relating to the cheques issued Mr Thomsett prepared a preliminary schedule detailing to whom the cheques were payable and the length of time the cheques had been outstanding.

7. On 9th March 2001 Mr Thomsett provided Mr Gillis with a copy of the preliminary schedule with a request that he review the listing to verify that all the professional disbursements highlighted on the schedule were unpaid at the inspection date."

8. The Investigating Accountant went on to deal with the balances on clients' ledgers in the following way.

9. Balances on Clients' Ledger

Mr Thomsett was provided with a list of client ledger balances which included office ledger balances as at 31st December 2000. Having reviewed this listing Mr Thomsett noted that one hundred and fifty five credit balances existed which totalled £47,926.32.

10. In order to assess the cause of these credit balances, Mr Thomsett selected fifteen totalling £18,027.37 for review. Having reviewed the relevant client matter files Mr Thomsett prepared a preliminary schedule detailing how the balances had occurred and which professional disbursements were unpaid at the inspection date.

11. During the course of the initial interview Mr Gillis admitted that his books and records contained breaches of the Solicitors Accounts Rules and he indicated that office bank account had received funds in respect of professional disbursements which remained unpaid. He said that the firm had, for a number of years, been

suffering with cash flow difficulties and despite significant inputs of capital from his own resources he had on a number of occasions delayed paying professional disbursements in order to support the firm's cash flow.

12. In view of the lack of reconciliation statements and the credit balances arising on the office ledger the Investigating Accountant was not able to express an opinion as to whether or not funds held on client bank accounts were sufficient to meet the firm's liabilities to clients.
13. The Tribunal had before it as Appendix A to the Investigating Accountant's Report an analysis of disbursements retained in office bank account as at 31st December 2000, including un-presented office bank account cheques totalling £9,262.07, and client credit office balances in respect of unpaid professional disbursements totalling £21,964.24. Whilst preparing the schedule of un-presented office account cheques, the Investigating Account discovered in the firm's cashier's desk twenty one further office bank account cheques totalling £2,155.81 each of which detailed the amount payable and the payee's details but had not been signed. All of the cheques found in the desk were noted as outstanding on the firm's list of outstanding office account cheques at the 8th January 2001.
14. At Appendix B to the Investigating Accountant's Report the Tribunal had before it details of Counsel's fees retained in office bank account totalling £12,081.97 in respect of 2 Kings Bench Chambers.
15. The sum of £9,262.07 arose in the following way. Between the 19th December 1995 and 5th August 1999 nineteen office bank account cheques in respect of client disbursements varying in amount between £145.00 and £3,826.08 were noted as having been raised. In all cases funds for those cheques had either been transferred from client to office bank account or lodged directly into office bank account between 19th December 1995 and the 30th July 1999. At 31st December 2000 none of those office cheques had been presented for payment. The categories in which those cheques arose were as follows:-

Counsel's fees	(8)	£6,158.46
Legal Aid Board Refunds	(1)	200.00
Medical Reports	(9)	2,311.88
Experts Fees	(1)	<u>591.73</u>
		<u>£9,262.07</u>

16. Between the 19th October 1998 and 12th August 1999 the respondent's firm raised fifteen bills of costs which included forty six professional disbursements varying in amount between £10.00 and £4,112.50 and totalling £21,964.24. In all cases funds for those bills of cost had either been transferred from client to office bank account or lodged directly into office bank account between 19th October 1998 and 12th August 1999. As at 31st December 2000 none of those professional disbursements had been paid. The categories into which those payments fell were as follows:-

• Counsel's fees	(13)	£11,003.57
• Legal Aid Board Refunds	(5)	3,316.25
• Medical Reports	(10)	2,791.50

• Experts Fees	(8)	2,391.32
• Due back to clients	(5)	1,623.25
• Misc Disbursements	<u>(5)</u>	<u>838.35</u>
	<u>(46)</u>	<u>£21,964.24</u>

17. With regards to the specific matter of Counsel's fees retained in office bank account in respect of 2 Kings Bench Chambers totalling £12,081.97, the respondent had advised the Investigating Accountant on 20th March 2001 that he had contacted the Chambers and requested that all outstanding fee notes relating to monies owed to them by his firm be sent. From these documents the Investigating Accountant was able to establish further unpaid professional disbursements totalling £12,081.97 which had been retained in office bank account.
18. The Investigating Accountant went on to note that the respondent was required to submit six monthly Accountants Reports and the previous three Reports submitted to the Law Society had referred only to minor breaches of the Solicitors Accounts Rules. No mention had been made of any unpaid client disbursements retained in office bank account.

The Submissions of the Applicant

19. The facts spoke for themselves. The respondent had an agreed overdraft facility with his bankers of £25,000.00. He had encountered cash flow difficulties.
20. The applicant put the matter before the Tribunal on the basis that the allegations made against the respondent were very serious. A solicitor's client account is sacrosanct. He invited the Tribunal to consider that the respondent had committed deliberate improper acts in relation to clients' money held by him. The Tribunal might feel that dishonesty was an issue which it should consider and the Tribunal might feel properly able to infer from the facts that the respondent had behaved dishonestly. The applicant did not make a specific allegation of dishonesty. The respondent and Counsel representing him were both aware that that was the way that the applicant would put the matter.

The Submissions of the Respondent

21. The respondent found himself greatly embarrassed. He had found himself unable to understand how he had come to be appearing before the Tribunal. The respondent accepted that accounting matters in his firm had fallen behind.
22. The respondent was a highly regarded personal injury lawyer. In a long career he had been the subject of only four matters where professional negligence had been claimed against him. He had handled very many cases. The respondent had become a sole practitioner in 1991 practising in the West End of London. Having a practice where he did meant that his office rental had been very high and he had the usual expenses of running a business.
23. Undertaking as he did personal injury work, the respondent had been greatly affected by what had amounted to the withdrawal of Legal Aid to support clients in that sort of work that funding being replaced by insurance companies. It had left the respondent faced with a difficulty of how he should fund the necessary experts. He had adopted

the route of paying out of his own office account. The respondent had met with a serious cash flow difficulty.

24. The Law Society had intervened into the respondent's practice. The value of disbursements to be paid back to the respondent was £220,000.00: that was to say he had paid that money out himself to fund clients' claims. That was a significant figure.
25. The respondent acknowledged that cheques had been drawn and not presented. The respondent had not realised that cheques had been drawn and not sent out. It was noteworthy that the cheques discovered by the Investigating Accountant had not been signed. The respondent had been very trusting of his bookkeeper. The bookkeeper had realised that going over the agreed office account overdraft limit would cause problems.
26. The respondent had maintained an honest belief that he could trade out of his liquidity problems. None of the money retained went into the respondent's own pocket. The result was that professional people advising in personal injury matters had not been paid. No client had suffered any loss.
27. The respondent faced a substantial income tax claim which he had not been able to meet nor had he been able to meet an Indemnity Insurance Premium of £67,000.00. Judgement had been obtained against the respondent in August 2000. At the time of the hearing that had been paid. In the previous year the respondent's wife had re-mortgaged their home raising £135,000.00 to discharge the respondent's VAT and PAYE arrears.
28. The Tribunal was invited to note the work in progress scheduled by the Law Society's Intervention Agent and from that it would ascertain that substantial sums of money were due to the respondent. The respondent hoped that when he received that money that he would be able to discharge the whole of his indebtedness.
29. The respondent lived modestly. At the time of the hearing he was living on the generosity of his family and his wife. He was aware that the matter would attract adverse publicity and he was deeply ashamed of what had happened.
30. The respondent had suffered serious ill health one of the causes of which had been the stress to which he had been subjected.
31. The respondent undertook community work which he did not intend to give up. He had given freely of his time to more than one charity.
32. The Tribunal was in all the circumstances invited to treat the respondent with a degree of leniency. The respondent was not in practice at the time of the hearing and suffered from serious ill health. It was hoped that the Tribunal would feel able to impose a sanction that would allow the respondent to hold his head high in the future.

The Findings of Tribunal

The Tribunal find allegations (a), (f), (g) and (h) to have been substantiated, indeed they were not contested. It is essential that a solicitor complies with all the rules relating to his practice as a solicitor. Punctilious compliance with the Solicitors Accounts Rules is essential.

The respondent had appeared before the Tribunal on earlier occasions.

On 20th May 1976 the Tribunal found the following allegations to have been substantiated against the respondent namely that he had:-

- (1) failed to comply with the Solicitors Accounts Rules 1975 in that notwithstanding the provisions of Rule 8 of such Rules he drew money out of client account other than that permitted by Rule 7 of such Rules;
- (2) been guilty of conduct unbefitting a solicitor in that he had:-
 - (a) used for his own purposes money held and received by him on behalf of clients.
 - (b) made or caused to be made false entries in the books of his firm for the purposes of deception.

The Tribunal found all of those allegations to have been substantiated and took the view that the respondent had deliberately misappropriated clients' monies and in the circumstance considered only one course was open to them. They believed that the respondent's conduct was an act of folly and was not criminally inspired and they expressed the hope that with the necessary consent he might be able to work in the law so that his talents might not be wasted. The Tribunal ordered that the name of the respondent be struck off the Roll of Solicitors.

On 16th December 1981 the respondent was restored to the Roll of Solicitors.

On the 24th April 1995 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had:-

- (a) failed to comply with the Solicitors Accounts Rules 1991 in that he:-
 - (i) notwithstanding the provisions of Rule 8 of the said Rules drew out of client account money other than as permitted by Rule 7 of the said Rules.
 - (ii) notwithstanding the provisions of Rule 11 of the said Rules failed to keep properly written up such books and documents of accounts as are required by such Rules.

In April 1995 the Tribunal took the view that the respondent had to be given credit for the fact that he made early admissions of the matters alleged and took steps to put right those matters that were wrong. The Tribunal accepted that it was not a case involving dishonesty but one involving muddle and failure to ensure due compliance with the relevant Rules. It had to be said that the respondent had been something of a nuisance and had made a considerable call upon The Law Society's time. The Tribunal accepted that it was right that it should regard the respondent's previous history of appearances before the Tribunal to be irrelevant in considering the sanction to be imposed upon the respondent on this occasion. The Tribunal considered it appropriate to impose a financial penalty upon the respondent in a figure that

indicated leniency. Because of the considerable involvement of the Law Society's Investigation Accountant, the costs awarded against the respondent were substantial. He was ordered to pay a fine of £1,500.00.

On the 21st October 1999 the Tribunal found the following allegations against the respondent to have been substantiated. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in that he had:-

- (a) failed to exercise proper supervision of a member of his staff, Michael David Goldstone, a struck off solicitor
- (b) contrary to Rule 8 of the solicitors accounts rules 1991 he had drawn money out of a client account other than was permitted by Rule 7 of the said rules.

In October 1999 the Tribunal noted that the struck off solicitor employed by the respondent had caused the respondent to be in breach of the Solicitors Accounts Rules. In the 1995 proceedings that struck off solicitor had been instrumental in making transfers from client to office account in the absence of any formal bills of costs. In his submissions, the respondent had then told the Tribunal that he recognised that to be a bad practice and gave assurances that he had put in hand checks and balances to make sure that that particular transgression would not occur again.

The Tribunal went on to say:-

“It was most unfortunate that the respondent appears before the Tribunal admitting breaches of the Accounts Rules which had been perpetrated by that same struck off solicitor. The Tribunal has noted that the gentleman is no longer employed by the respondent who had perhaps exercised not the soundest judgement when he did not take similar steps upon an earlier occasion. He had been put on notice that Mr Goldstone's attitude towards the Solicitors Accounts Rules was unacceptably relaxed. Punctilious compliance with those Rules was a fundamental requirement of practice to ensure the prompt and fair handling of clients' monies. There was no doubt that the onus of supervising an employee who was a struck off solicitor was a heavy one and had not been properly discharged by the respondent.

The Tribunal felt unable to take as lenient a stand as that taken by another division in 1995.

In all of the circumstances the Tribunal considered it right to impose a substantial financial penalty upon the respondent and ordered him to pay the applicant's costs to include the costs of the Investigation Accountant of the Law Society in a fixed sum”.

The Tribunal expressed dismay at hearing of the respondent 's most unsatisfactory disciplinary history. In November 2001 the Tribunal after finding the allegations to have been substantiated wished to make it plain that it is essential that a solicitor complies with all the rules relating to his practice as a solicitor. Punctilious compliance with the Solicitors Accounts Rules is essential.

Clearly it is in the best interest of clients that the Solicitors Accounts Rules be complied with in every respect so that it can be demonstrated to clients that their monies are being handled fairly and properly by a solicitor. Similarly it is of great

importance to a client that a solicitor is covered by indemnity assurance against the possibility of his acting negligently. A client is entitled to expect that any negligence claim arising against a solicitor would be met in full.

The Tribunal notes the cash flow problems suffered by the respondent and the reasons why those difficulties arose to a large degree following the withdrawal of support of persons who hitherto would have been assisted by the Legal Aid Fund. The Tribunal notes that the respondent appeared to have accepted a huge personal responsibility for funding client's claims. It could be said, of course, that it was not the respondent alone who was funding clients' claims but those experts, professionals and third parties that he did not pay.

The Tribunal considers that the holding of monies to which those third parties were entitled in office account was a deliberate act on the part of the respondent which did amount, as stated by allegation (f), to be a deliberate and improper utilisation of clients' funds for his own purposes. Although strictly speaking the money did not belong to clients, it was money which should have been retained in client account until payment was made to the third party. This was a state of affairs amounting not only to improper conduct by the respondent but the Tribunal considered, applying the test in *Royal Brunei Airlines v Tan* (Privy Council 1994) that the respondent had in that regard been dishonest.

A solicitor might not expect to remain a member of the solicitors' profession if he has failed to demonstrate the probity, integrity and trustworthiness required of a solicitor. The Tribunal is of the view that the respondent has not demonstrated those qualities and indeed the Tribunal is of the view that he has acted in a way which is dishonest. It would not be right to permit him to continue to be a solicitor.

The Tribunal ordered that the name of the respondent be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry. The costs of the applicant were fixed in an agreed sum and the Tribunal further ordered that the costs of the Investigating Accountant of the Law Society which were also to be met by the respondent should be subject to a detailed assessment if they were not agreed between the parties.

DATED this 31st day of January 2002

on behalf of the Tribunal

W M Hartley
Chairman