

IN THE MATTER OF BRUCE ROBERT DOUGLAS STATHAM

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)
Mr A G Ground
Mr M C Baughan

Date of Hearing: 18th June 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 Ian Christopher Bonney-James solicitor employed by The Law Society at the OSS of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE on 30th August 2001 that Bruce Robert Douglas Statham solicitor of Northlands Road, Southampton (now of Anglesey Road, Shirley, Southampton) 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.

By a supplementary statement of Geoffrey Williams solicitor of Geoffrey Williams and Christopher Green Solicitor Advocates of 2a Churchill Way, Cardiff, CF10 2DW dated 5th June 2002 and made on behalf of the OSS, certain allegations made in the statement of Ian Christopher Bonney-James were amended subject to the leave of the Tribunal, others were withdrawn and a further allegation was added. The allegations as amended with the consent of the Tribunal were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects namely:-

- (a) that he failed to maintain properly written up books of account contrary to Rule 11 of the Solicitors Accounts Rules 1991;
- (b) that he drew monies from a client account otherwise than as permitted by Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;

- (c) that he failed properly to account to the LAB upon the conclusion of litigation matters contrary to Regulations 100(8), 105 and 106A Civil Legal Aid (General) Regulations 1989;
- (d) that he used monies properly belonging to the LAB for his own purposes;
- (e) that he failed to pay his contributions to the Solicitors Indemnity Fund as the same fell due;
- (f) that he failed promptly to reply to correspondence from the Monitoring & Investigation Unit of The Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 18th June 2002 when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 4DW appeared as the Applicant and the Respondent appeared in person but spoke through Mr Briggs solicitor appearing as a friend.

The evidence before the Tribunal included the admissions of the Respondent together with the oral evidence of Mrs Statham.

At the conclusion of the hearing the Tribunal ordered that the Respondent Bruce Robert Douglas Statham of Anglesey Road, Shirley, Southampton (formerly of Northlands Road, Southampton) solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 18th day of June 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

The facts are set out in paragraphs 1 to 47 hereunder: -

A. Background

1. The Respondent born in 1951 was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised on his own account as Statham's solicitors of Hammonds Court, 22 London Road, Southampton, Hampshire, SO15 2AF until intervened into by The Law Society on 16th February 2000.
3. The Respondent did not hold a current Practising Certificate and was adjudicated bankrupt on 24th May 2001. The Respondent had not practised in the law since the intervention.

B. Accounts Monitoring Visit commencing 5th January 1999

4. On 24th November 1999 an Investigation & Compliance Officer formally reported on the practice of Statham's and the activities of the Respondent. The inspection started on 5th January 1999 at the former practice address.
5. The Investigation and Compliance Office reported various findings.
6. The Officer reported that the books of account were not in compliance with the Rules in that client balances produced for inspection of a four year period between October 1995 and August 1999 were not matched by funds available in the client bank accounts. The Officer further noted that bank reconciliations were regularly greater

than one month old containing debit entries varying in amount between a minimum of £27,369.31 at 31st March 1996 and a maximum of £79,505.47 at 30th July 1999.

7. The Officer further reported that on a sample of 37 client matters there were 43 lodgements in client bank account totalling £61,330.17 which were not supported by a corresponding movement of funds at the bank. The Officer cited the example of Mr R (see paragraph 33 below).
8. The Respondent agreed that this was the case and explained that in each matter referred to above, Legal Aid Board ("LAB") payments on account of costs and disbursements had been notified to the firm and posted to the relevant client ledger accounts, but there had been no corresponding movement of funds on client bank account.
9. In the light of the above the Officer could not express an opinion as to whether there were or were not sufficient funds held on client bank accounts to meet the firm's liabilities to clients as at 31st August 1999.
10. The Respondent's response to this was that as at 30th September 1999 funds had been lodged in the client bank account in respect of outstanding debit entries; he further stated that funds had been paid to the LAB and that balances on clients' matter lists were now equalled by funds available on client accounts.
11. The Officer specifically went on to report as to the events during September 1999. He noted that four transfers totalling £38,583.70 had been made from office to client account in September 1999. These had been made according to the Respondent to eliminate the outstanding debit entries on the client bank reconciliation. These were mainly office to client bank account transfers which had been posted to the client ledgers but had not been supported by corresponding movements of funds. The Officer also reported that a payment of £17,800.35 had been made to the LAB on 30th September 1999. The Respondent stated that it was to clear the firm's indebtedness to the LAB as at 30th September 1999. The Respondent further added that he had also made earlier payments from client bank account to the LAB to clear the firm's indebtedness.
12. The Report noted the Respondent's indebtedness to the Solicitors Indemnity Fund in the sum of £54,459.59 in relation to his 1998 to 1999 insurance premiums. The Respondent said that he could no longer afford to pay his premiums and that he had decided to seek indemnity insurance from an alternative source for 1998 to 1999. He said that proceedings had been issued to recover the outstanding premiums which he was defending. He said that he had recently asked the Fund for forms to apply for a waiver of contributions but had not yet received them.
13. The Officer then reported more specifically on the Respondent's indebtedness to the LAB for the period 1994 to 1999. The sums were substantial and never fell less than £24,000. When the Officer sought the Respondent's explanation he confirmed that these related to recoupments of payments on account paid to the firm by the LAB. The Respondent confirmed to the Officer that on the settlement of a large number of cases, he had been unable to recover (from third parties) costs and disbursements to

cover payments he had already received on account. An example of this was the matter of Mr M (see paragraph 41 below).

14. The Officer sought the Respondent's explanation as to why something had not been done earlier to rectify the position and was told that the LAB "had made it very difficult" as they had refused to accept cheques on individual matters. The Officer noted that the first payment to the LAB had been on 6th November 1996 but the majority of payments were not made until 1999.
15. The Officer directly asked the Respondent if he had derived a benefit because the effect would have been to reduce the office account overdraft by remaining indebted to the LAB for nearly five years. The Respondent replied "We have had no money in there (office bank account) that we did not think we were entitled to."
16. The Officer further noted that when he interviewed the Respondent on 28th January 1999, he asked the Respondent what the LAB had said to him about the situation. The Respondent asserted that they had "said nothing." The Officer went on to report that correspondence he had with the LAB showed that they had raised the matter as early as 16th October 1996. When challenged in a subsequent interview the Respondent stated "It was two and a half years ago. I thought you meant more recently."
17. The Officer's Report then referred to qualified accountant's reports filed by the firm's reporting accountant. These detailed breaches including shortages on client bank account and identifying problems with the LAB.

C. Explanation of Allegations (a) to (d)
Legal Aid payments

18. Solicitors carrying out this type of work can receive payments on account of costs and disbursements from LAB as the cases progress - Regulation 100 Civil Legal Aid (General) Regulations 1989.
19. The Respondent received a considerable volume of such payments.
20. A solicitor is required to forthwith submit a report to LAB upon the completion of each case – Regulation 72.
21. In so doing the solicitor is required to confirm the amount of costs recovered from the other side. Where costs have been agreed no assessment of costs is required – Regulation 105 and 106A.
22. When the costs recovered are less than the amount paid on account by LAB then the solicitor shall on demand repay the balance due to LAB – Regulation 100(8).
23. The Respondent would in the ordinary course of practice receive regular fortnightly statements from LAB. These would specify any amounts due to him from LAB in which event a payment would accompany the statement.

24. However by late 1994 there came a time when the amounts due from the Respondent to LAB under Regulation 100(8) exceeded the amounts due from LAB to the Respondent.
25. In such circumstances the statement from LAB would be a demand for payment. Specimen statements were before the Tribunal.
26. Details of the amounts involved at month ends were shown at appendix A to the Report of the Investigation Accountant.
27. The Respondent did not pay the amounts claimed. The payments he had received on account had been paid into or transferred into his office account.
28. Where the Respondent had recovered his costs from the other side then these would represent his total costs and he would be liable to repay all sums paid on account by LAB.
29. Ultimately the Respondent did repay the amounts owing to LAB accomplishing this exercise by 30th September 1999 (see paragraph 10 above).

The treatment of Legal Aid payments in the books of account

30. At the material time a statement from LAB would show payments on account being made to the Respondent.
 31. No actual payment would be made as the net position on the statement was that the Respondent was indebted to the LAB.
 32. However the "payment" on account would be credited to the relevant client ledger notwithstanding the fact that no cash was being paid into client account. Then the Respondent would promptly transfer a like sum from client account to office account - thus using the funds of other clients for this purpose.
 33. The Report set out by way of example (see paragraph 7 above) the matter of Mr R.
- Mr R - £4,490
34. The firm acted for Mr R in connection with a personal injury matter for which action a Legal Aid certificate had been granted.
 35. On 8th February 1995, the relevant account in the clients' ledger was credited with £4,490 in respect of a "payment on account of costs", included on a statement from the LAB dated 27th January 1995. The balance shown on this statement was £2,904.97 debit and a request for the payment of this amount to the LAB was also included on the statement. An examination of client bank account at that time indicated that this amount was not paid.
 36. The Respondent agreed that, in respect of the payment on account of costs of £4,490 there had been no corresponding movement of funds on client bank account.

37. The relevant account in the clients' ledger was then charged on 8th February 1995 with £4,490 in respect of a transfer from client to office bank account and the Respondent agreed that no funds were properly available to make this transfer.
38. On 22nd October 1997, over two and a half years later, £7,500 was lodged in client bank account in respect of agreed costs and disbursements from the defendant's solicitors.
39. In this manner client account debits (shortages) were created.
40. Furthermore improper entries were made in the Respondent's books of account as they were not supported by movement of funds at the bank. The crediting of client ledgers as above was one example.
41. The Report of the Investigation Accountant set out a further example being the matter of Mr M.

Mr M

42. The firm acted for Mr M in connection with a personal injury matter for which a Legal Aid Certificate had been granted. By 27th July 1994 the Respondent had received into office account £8,612.50 being several LAB payments on account in this matter. The case settled and on 27th January 1996 agreed costs of £4,161.99 were received by the Respondent. Thus he was obliged to repay the monies received on account from LAB. A demand for such repayment was made on 25th July 1997.
43. The Respondent 's books of account showed that on 29th July 1997 the sum in question was paid to LAB out of client account. However it was not.
44. The making of that book entry created a debit balance on client account. A transfer from office account to client account of the necessary sum to clear the client debit was posted in the books but no money was transferred from office account to client account.

D. Allegation (f)

45. Following an Accounts Monitoring Visit on 4th September 1996, a letter dated 24th September 1996 was sent to the Respondent from the Monitoring Unit which stated, inter alia:

"I further noted from an examination of the client reconciliation prepared at the end of July 1996, that the computerised reconciliation system is used to record receipts and payments from the LAB. This has resulted in the reconciliation statement containing a number of outstanding entries, which relate to "paper" transactions between the firm and the LAB. I attempted to prepare my own reconciliation statement as at 31st July 1996 without taking into account the LAB transactions. Using the figures from your July reconciliation printout, I noted that there was a discrepancy between the cash book and the adjusted bank balance of £8,811. This discrepancy represents a shortage on client account and therefore requires urgent investigation and correction. Please confirm that this is being put in hand."

46. The Respondent did not respond and the Monitoring Unit wrote again to him on 8th November 1996 and a reply was received on 11th November 1996, indicating that he was sorting out the matters and that he would reply in full in 28 days. No further response was received and the Monitoring Unit wrote again on two occasions, 17th December 1996 and 17th January 1997, in an attempt to gain a full response.
47. Finally in a letter to the Monitoring Unit dated 17th February 1997, the Respondent replied to the Monitoring Unit's letter of 24th September 1996 thus:-

"The discrepancy mentioned has been fully corrected and we have now opened a separate account for our Legal Aid transactions which will avoid any further difficulty."

The Submissions of the Applicant

48. This was an admitted matter.
49. Allegations (a) to (d) all arose out of the same material. There was too little money on client account compared with the list of client balances.
50. The debit entries were entries where no cash moved although the books purported to show movement and this situation had existed for many years.
51. The matter of Mr R was a situation where the LAB was clawing back from the Respondent more than it was paying.. There was therefore a bill from the LAB rather than payment. A "payment" on account of costs" was posted to client account but no cash was received yet on the same day £4,490 was transferred in cash to the office account. This meant that other clients' funds had been used.
52. It was over two and half years later that costs were recovered and put into client bank account and the Respondent could pay the LAB, which he did not do until November 1999.
53. This meant that other clients' funds had been used from February 1995 to November 1999.
54. It was submitted that this was typical of the 37 matters identified in the Report.
55. In the submission of the Applicant this was material in respect of which, depending on the explanation put forward by the Respondent, the Tribunal could find dishonesty.
56. The Applicant made no criticism of Mrs Statham, the Respondent's wife, who had been the book keeper.
57. The Respondent had had little or no part in the book keeping but should have done.
58. Although the Investigation Accountant had been unable to compute liabilities to clients, there had been no cost to the profession in this regard so, in favour of the

Respondent, the Applicant assumed that in September 1999 matters had been in balance.

59. To bring the situation into balance cash had been moved from office to client bank account in September 1999.
60. In the light of the Respondent's arrears with the payment of his insurance premiums the Tribunal might think that financial difficulties formed the back drop to the Respondent's conduct.
61. In the matter of Mr M the client ledger showed an entry repaying Legal Aid in the sum of £8,612. 50. In fact no cash was moved. The book entry had caused a client account debit so on the same day an entry showed a transfer from office. The books therefore showed that the LAB had been repaid but in fact it had not. The subsequent transfer from office to client bank account had not been made.
62. It was submitted that this was an improper use of LAB monies. The books did not reflect the correct movement of cash.
63. The Respondent had also been on notice from his own accountant's reports. Whatever the Respondent's lack of involvement in the book keeping he was clearly on notice of the problems.
64. The Applicant did not seek to say that dealing with the LAB was straightforward from the accounting point of view but the documents showed that sufficient payments were not being made. The Legal Aid statements in November 1994 showed that the clawbacks by the LAB exceeded the payments made. That was a demand for payment.
65. A statement from May 1995 included the words "Please forward your remittance with this form."
66. Other similar documents were before the Tribunal.
67. A letter of 24th December 1999 from the OSS had sought the Respondent's observations and to his credit he had given them in his letter of 4th February 2000.
68. The facts and allegations had all been accepted by the Respondent. The issue before the Tribunal was one of the gravity of the matter and the question of dishonesty.
69. It was submitted that from November 1994 the Respondent had been receiving demands for payment from the LAB. Money had been paid into the office account. The Respondent knew that the money was there. He should have repaid the LAB and he should have been on notice from the correspondence.
70. It was possible that the Respondent just could not pay the money but the case exhibited misuse of clients' funds. It was a serious case of conduct unbecoming a solicitor.

The Submissions on behalf of the Respondent

71. Mr Briggs solicitor appeared as a personal friend to assist the Respondent in challenging the inference of dishonesty.
72. Through Mr Briggs the Respondent admitted responsibility although he did not do the books.
73. It was a culpable mistake but not deliberate. The Respondent had been a fine personal injury lawyer but was not a businessman.
74. Mr Briggs knew that the Respondent was a fine lawyer as he had known him for 20 years.
75. The Submissions on behalf of the Respondent were supported by the oral evidence of the Respondent's wife Mrs Carol Statham.

Oral evidence of Mrs Statham

76. Mrs Statham was employed as a cashier and book keeper in the Respondent's firm.
77. When she had started doing the accounts there was always money coming in from the LAB. When matters became the other way round she had telephoned the LAB and they had said that it would right itself. It did not do so and Mrs Statham had telephoned them again and they had said the same.
78. The system then appeared to change but the statements did not follow on. The firm sent a cheque then the statements went back to debit.
79. It turned out that there were statements missing which was why the balance did not follow on.
80. [The Respondent was excused by the Tribunal from hearing the remainder of Mrs Statham's evidence].
81. Mrs Statham had telephoned Mr Briggs late on the morning of the hearing as the Respondent was not capable of dealing with the hearing. The Respondent was very ill. Mrs Statham did not feel capable of dealing with the matter on his behalf.
82. The Respondent had not wanted to accept his problems but had now accepted that he had a drink problem and was getting help. He was not capable of dealing with the matter before the Tribunal today.
83. Under cross-examination Mrs Statham said that the Respondent was to a certain extent suffering from his drink problem in 1994 but the proceedings had made it worse.
84. Mrs Statham confirmed that the Respondent had signed transfers. She had acted on what she had been told to do by the fee earners and the Respondent would then sign it off.

85. As far as Mrs Statham was aware the Respondent had seen the accountant's reports.
86. Mrs Statham had been the cashier since 1992 and there had occasionally been a LAB debit figure.
87. There had been four fee earners including the Respondent.
88. The Respondent was now getting help with his alcohol problem and the effects of the alcohol.
89. Following Mrs Statham's evidence Mr Briggs made the following further submissions.
90. The Respondent had been working as a postman but had been off sick after an accident.
91. The Respondent had a number of physical manifestations of his drinking problem.
92. The Respondent was not a dishonest man. He had made a mistake, compounded by his drinking.
93. The Respondent was desperately sorry and ashamed. He had lost his business and might be losing his wife. He was bankrupt.
94. The one thing the Respondent held on to was that one day he might be able to practise again. A finding of dishonesty would be catastrophic for him.
95. The drink problem had evolved over the last few years and the Respondent would not accept the problem but had now done so.
96. The Respondent's physical problems had been compounded by the stress of the hearing.
97. Mr Briggs had canvassed the option of an adjournment but the Respondent wanted the matter to be dealt with.
98. The Respondent had been a fine lawyer fighting for compensation for clients in personal injury matters. Where he had failed was as a manager of his business.
99. Mr Briggs had been asked some two years ago to provide a certificate to say that the Respondent was a fit and proper person to act as a solicitor. Mr Briggs would not have agreed to this unless he was certain that it was true.

The Findings of the Tribunal

100. The Tribunal found the allegations to have been substantiated indeed they were not contested.

101. The statements from the LAB were described as demands but appeared to be rather statements of a running state of indebtedness. The LAB had allowed the indebtedness to continue over a long period. The Tribunal found it difficult to infer dishonest behaviour from this state of affairs especially given the evidence of Mrs Statham. The LAB had tolerated the situation for five years.
102. The books of account did not record the real situation and the Respondent had rightly accepted responsibility for this although the Tribunal accepted that he had not himself run the accounts. The Respondent had repaid the LAB by late 1999. It was clearly a serious matter however that other clients' money had effectively been used by virtue of the system used to record the LAB transactions. The Respondent had admitted serious breaches of the Accounts Rules and other serious matters. The Tribunal was not satisfied on the evidence available that the Respondent's conduct had been dishonest.

Previous appearance before the Tribunal

103. At a hearing on 14th September 1999 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbefitting a solicitor in that he had:
- (i) failed promptly to pay Counsel's fees for which he was liable;
 - (ii) failed in a legally aided matter promptly to procure the taxation or assessment of his costs so as to enable the payments of Counsel's fees.
104. The Tribunal on that occasion acknowledged the difficult position in which the Respondent had found himself but said that ensuring that Counsel was paid was entirely the Respondent's responsibility and he should not have allowed matters to have run on for so long in connection with total fees in the region of £5,500. He had of course already paid out of his own pocket substantial funds representing Counsel's fees and the costs in a Wasted Costs Order as a result of the way in which an employee dealt with certain areas of work. Nevertheless he had not availed himself of the 28 days given to him by The Law Society's Professional Regulation Case Work Sub-Committee in January 1999 in which to put matters right. The Tribunal on that occasion recognised that the Respondent's breaches were not at the most serious end of the scale but said that it had been the Respondent's own behaviour which necessitated his appearance before the Tribunal. The Tribunal felt that his failures and breaches should be marked by the imposition of a moderate fine and ordered him to pay £750 together with fixed costs.
105. On 18th June 2002 the Tribunal considered that there were many sad facets to this case. The Tribunal gave credit to the Respondent for accepting responsibility for what had occurred and were grateful that the matter could be concluded today. Although the Tribunal had not found the Respondent to have been dishonest, serious allegations had been substantiated against him. Additionally the Tribunal had heard that the Respondent was extremely unwell. It was clearly right that the Respondent should not be allowed to practise as a solicitor at present. The Tribunal trusted that the Respondent would take such help as was available to him to overcome his problems and to recover his health. The Tribunal ordered that the Respondent Bruce Robert Douglas Statham of Angelsey Road, Shirley, Southampton (formerly of Northlands Road, Southampton) solicitor be suspended from practice as a solicitor for

an indefinite period to commence on 18th June 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

DATED this 24th day of September 2002

on behalf of the Tribunal

J P Davies
Chairman