No. 8515/2001

IN THE MATTER OF OLIVER MOELWYN DAVIES, Solicitor

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. L N Gilford
Dame Simone Prendergast

Date of Hearing: 4th April 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 Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs. Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ on 19th December 2001 that Oliver Moelwyn Davies of Llangunnor Road, Carmarthen 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 made against the Respondent were:-

(1) he has dishonestly alternatively improperly misappropriated and utilised clients' monies for his own benefit;

(2) he has acted in breach of Rules 7 and 8 of the Solicitors' Accounts Rules 1991 in that there has been transferred from Clients to Office Account monies other than in accordance with the provisions of the said Rules;

(3) he has failed to ensure that the accounts of the firm were prepared and maintained in accordance with the provisions of Rule 11 of the Solicitors' Accounts Rules 1991;

(4) he has failed to account for monies due to Messrs Customs & Excise in respect of Value Added Tax upon work completed;

(5) he has failed to supervise or adequately supervise employees of the firm;

(6) he has been guilty of delay in the completion of conveyancing matters undertaken and as hereinafter appears;

(7) in respect of conveyancing matters, he has charged costs in respect of work not done;

(8) he has failed to act in accordance with an undertaking given to a mortgagee and has been guilty of delay in relation to the said matter;

(9) he has failed to respond to correspondence and enquiry addressed to him by clients, mortgagees, other solicitors and the Office for the Supervision of Solicitors;

(10) he has been guilty of overcharging in respect of clients' affairs and as hereinafter appears;

(11) he has acted in contravention of the provisions of Practice Rule 6 of the Solicitors Practice Rules 1990 in acting for all parties in a conveyancing transaction;

(12) deceived or alternatively improperly misled the Nationwide Building Society as to an application for registration of a mortgage;

(13) by virtue of each and all of the aforementioned has been guilty of conduct benefiting a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs. Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent had addressed a letter dated 30th March 2002 to the Tribunal in which he included his written submissions.

The evidence before the Tribunal included the admissions contained in the Respondent's written submissions.

At the conclusion of the hearing the Tribunal ordered that the Respondent Oliver Moelwyn Davies, of Llangunnor Road, Carmarthen be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £16,979.83p inclusive.

The facts are set out in paragraphs 1 to 31 hereunder:-

1. The Respondent had been admitted as a solicitor in 1979. At the material times he had been a partner in the firm of Watkins Jones Tribe & Harrop-Griffiths with practices at 2 Gaylard Buildings, Court Road, Bridgend and 123 Woodfield Street, Morriston Swansea. The Respondent was forty five years of age. The Law Society intervened into the Respondent's practice on 19th December 2000.

2. On 16th May 2000 a Investigation and Compliance Officer of the OSS (the ICO) attended at the offices of Watkins Jones Tribe & Harrop-Griffiths at 123 Woodfield Street, Moriston, Swansea to inspect the firm's books of account. The appropriate notice had been given.

3. The ICO produced a report dated 12th October 2000 which was before the Tribunal.

4. The Respondent had practised in partnership with Ms Squires and Mr Harrop-Griffiths. On 5th April 2000 Mr Harrop-Griffiths had retired from the partnership, Ms Squires had never been a partner responsible for the accounts or financial affairs of the firm. The Law Society had been satisfied that that had been the case and that she was in reality a salaried partner and had considered it appropriate not to refer her to the Tribunal.

5. The ICO's account revealed that the firm held three office accounts which as at 30th April 2000 had the following balances:-

Office Account	£3,326.81 debit
Office Account No. 2	£80.22 credit
Office Loan A/C	£97,000.00 debit

6. One set of books was maintained in respect of all of the offices of the firm. The books were not in compliance with the Solicitors Accounts Rules .

7. There were eighty eight credit balances on office account totalling £123,075.29 as at the inspection date.

8. The ICO noted that within a few days of the firm being notified of the inspection sixty nine bills of costs had been posted to ledger accounts in order to "correct" a number of the office account credit balances. As a result of the posting of those bills the firm's VAT liability for March to May 2000 quarter increased by a sum in the region of £15,000 to a total of £28,542.03.

9. A VAT return was submitted to a HM Customs & Excise dated 29th June 2000 in respect of which a payment was required to be made on or before 31st July 2000. The payment had not been made. The Respondent indicated to the ICO that an agreement had been reached to pay at the rate of £7,500 per month.

10. The firm's books of account had been inspected in July 1996 when the question of credit balances on the office account columns in the clients' ledger had been drawn to the firm's attention. At that time the Respondent had said that those balances would be investigated and eliminated as soon as possible. A further inspection had been carried out in August 1997 when eight hundred and sixty credit balances on the office side of the accounts held in the clients' ledger had been identified and totalled £141,589.35.

11. The causes of the office credit balances were discussed with the ICO carrying out the inspection in September 1997 and the following causes were agreed with the Respondent:-

    i) Transfers made from client to office bank account on account of costs where no bill or written intimation had been delivered to the client.

ii) Transfers made from client to office bank account where no bill had been raised but the client had been given a written intimation of costs.

iii) Transfers made from client to office bank account where a bill had been raised but it had not been entered into the accounting records.

12. In September 1997 the VAT liability that would arise should bills be posted correctly in the accounting records was raised by the ICO. It was said that any VAT liability would have to be settled over an extended period of time. The Respondent had agreed that in adopting the practice of maintaining credit balances on office account his firm was effectively collecting the VAT from clients but withholding its onward transmission to Customs & Excise. That provided the firm with cash flow at the expense of Customs & Excise. The Respondent agreed but that had not been the intention.

13. A list of liabilities to clients as at 30th April 2000 was produced for inspection. The items on the list were in agreement with the balances shown in the clients' ledger and totalled £1,113,440.73 after adjustment. Additional liabilities to clients totalling £4,558.39 were identified as existing at the inspection date which were not shown by the books. This led to there being a cash shortage in that sum.

14. The cash shortage had arisen as a result of an incorrect transfer from client to office bank account of £2,050.09 and an incorrect transfer described as "additional costs" from client to office bank account of £2,508.30p.

15. The first incorrect transfer related to the client Mr D for whom the Respondent acted in a conveyancing transaction. After the matter had completed the sum of £2,012.25 remained due to the client. That sum had been placed on a designated deposit account and when the account was closed on 5th February 1999 the funds were transferred to the firm's general client account together with interest. On 8th February 1999 the amount of £2,050.09 was transferred to the firm's office bank account. The Respondent had been unable to explain that transfer.

16. With regard to the incorrect transfers of "additional costs" during the period 8th to 12th November 1999 sixty-five transfers varying in amount between £0.02 and £226.18 and totalling £2,508.30 were made from client to office bank account. The Respondent had agreed that the transfers represented a "purge" on small balances which were billed out of the system as "additional costs" the bills had not been delivered to the clients. The narratives shown on the bill relating to the largest sum transferred was "re costs for additional work".

17. During the course of the inspection the ICO identified that a transfer of £18,500 had taken place from client to office bank account on 7th June 2000 which had not been allocated to any account in the clients' ledger. On the same day a cheque for £17,936.92 made payable to solicitors representing HM Customs & Excise was cleared through the firm's office bank account. The Respondent agreed that the unallocated transfer had been made to "cover" the office bank account cheque for the VAT. He said that the shortage had been rectified on 31st August 2000 by the delivery of bills of costs due to the firm.

18. During the course of the inspection the ICO identified a number of transfers, many in round sums, from client to office bank account which were recorded in the firm's transfer journal but not elsewhere. The dates and amounts of those transfers were as follows:-

31.01.00	1,024.20
04.02.00	1,024.20
17.03.00	3,240.96
20.03.00	800.00
22.03.00	500.00
23.03.00	2,500.00
24.03.00	2,510.64
27.03.00	1,500.00
28.03.00	1,200.00
29.03.00	1,500.00
30.03.00	1,200.00
31.03.00	5,100.00
03.04.00	1,700.00
05.04.00	200.00
	£24,000.00

19. On the last day of the firm's practice year, 5th April 2000, the sum of £24,000 was transferred back from office to client account and recorded on an account in the client's ledger headed "small fees". The Respondent indicated that the "small fees ledger is generally used for minor items where no file is opened. I don't know specifically why the transfers were there."

20. The Respondent assumed that the large round sum transfers had been made to correct any errors or overpayment made but he didn't understand the position himself.

21. When the ICO pointed out that the firm's office overdraft limit was £5,000 and on some occasions monies were transferred when the firm needed to make payments to creditors and the firm's overdraft was close to its limit, the Respondent said "we wouldn't directly use client money to pay creditors, we would only use money we knew was available as costs."

22. During the course of the inspection the ICO examined a number of client matter files relating to conveyancing transactions. Those inspected mainly had been carried out at the firm's Bridge End office by or under the supervision of the Respondent.

23. A number of issues of poor practice were identified in relation to ten matters. In his report the ICO summarised those errors of poor practice to be:

    a) misleading mortgagee clients as to the progress of the registration of their mortgages at HM Land Registry.
    b) non registration of title
    c) late registration of title
    d) failure to deal with Land Registry requisitions

    The Respondent had agreed that his conduct with regard to those conveyancing files had not been acceptable.

24. The specific matters are contained in the following seven paragraphs.

25. On 16th October 2000, Lloyds TSB Homeloans Ltd wrote to the OSS. They were unable to obtain information from the Respondent about completion of a property transaction which had taken place some time before.

26. On 2nd November 2000 in a telephone call between the OSS and the Respondent, the Respondent indicated that he had replied to Lloyds TSB Homeloans Ltd and that they had the relevant deeds. He would take action if this was not the case. On 10th November, the Respondent over the telephone said that he could not find the deeds.

27. The Respondent had entered into an undertaking with Lloyds TSB (inter alia) to forward the title deeds. The undertaking had been breached.

28. The OSS wrote to the Respondent on 1st December 2000 raising with him various complaints made. There had been no response. A further letter was sent on 15th December. The Respondent did not reply. On 11th January, the interveners spoke to the OSS confirming that the file had been found. There was an unsigned mortgage deed, an unsigned conveyance and Local Searches. There was nothing signed and dated on the file. The last correspondence had been in March 2000.

29. On 19th January 2001, the OSS wrote again to the Respondent in relation to these matters requiring response within eight days. No response had been received.

30. The interveners wrote to the OSS in relation to the matter of C deceased, expressing concern that the Respondent had raised a bill for excessive costs. Bills had been raised in excess of £2,500, but work done on the file over six years had a value of £49.50. The file had been billed in such a way as to ensure that interest accruing on money held in trust went to the firm by way of fees. In a letter from the Respondent's firm of 4th October 2000, it was conceded that it would be "difficult to justify" the costs charged

31. The Respondent acted for Mr & Mrs J in the purchase of a property at Newton. The Respondent acted also for the Vendor of the property, Mr M and on behalf of Nationwide Building Society. The transaction was completed in July 1999. On 25th September 1999, Nationwide Building Society requested details of the registration of their Charge and on 14th October the Respondent advised that the application was currently with the Land Registry and he anticipated return of the Deeds within four weeks. The application to the Land Registry had not been submitted until March 2000. An "explanation with warning" letter dated 18th June was sent to the Respondent to which there had been no response. There had been no response to a reminder of 12th July 2001.

The Submissions of the Applicant

32. The Respondent was the managing partner of the firm and had been wholly engaged in the conveyancing transactions upon which some of the allegations were based. The appropriate notices under the Civil Evidence Acts and the Tribunal's Rules had been served upon the Respondent together with the documents referred to.

33. The Tribunal had before it the Respondent's letter which in effect contained admissions.

34. The Tribunal was invited to place reliance upon the ICO's Report.

35. The Respondent's former partner, Mr Harrop-Griffiths, had retired from practice and Ms Squires had been an assistant solicitor and subsequently a salaried partner who had not been involved in any of the firm's accounting procedures. It had been the Applicant's view, and the view of those instructing him, that it was right that the managing partner should face the allegations before the Tribunal.

36. Perhaps the most serious allegation was that the failure on the part of the Respondent to draw bills in a proper form and at the proper time pay value added tax to Customs & Excise. Failures to draw those bills but to transfer sums to office account assisted firms cash flow at the expense of Customs & Excise. It was further an extremely serious matter that unexplained round sum transfers had been made from client to office account which meant that the firm was using clients' money for its own purposes.

The Submissions of the Respondent (a summary of the submissions sent with his letter referred to above dated 30th March 2002

37. The Respondent joined the practice in 1980 when he was charged with opening a new branch office at Swansea. In due course over 65% of the fee income of the firm related to domestic conveyancing which was primarily derived from work undertaken from work undertaken at the Swansea Office. An office was opened at Bridge-End in 1999 which contributed to this proportion of the fee income.

38. Mr Harrop-Griffiths and Ms Squires were both aware of the firm's financial position. By the time he retired Mr Harrop-Griffiths had overdrawn his capital account by a substantial amount. He repaid a proportion after re-mortgaging his house but the balance had been written off.

39. Mr Davies did not agree with Ms Squires description of her own position. It was not right that she should seek to absolve herself in responsibility.

40. The firm had a substantial overdraft at the time when the Respondent joined and the borrowing had been reduced during his ten years with the firm.

41. The firm's VAT returns were submitted on time and an arrangement had been made to discharge the outstanding arrears. That had proved increasingly difficult because of penalties imposed.

42. The firm had expected the payment of a large account in June 2000 and in anticipation of that they paid the value added tax. The receipt of the expected costs was delayed.

43. The Respondent had taken on a huge personal work load, the Swansea office had taken on 150 new conveyancing matters in the month which the Respondent had endeavoured to supervise while taking on some eighty to one hundred cases himself. The pressure had been immense and he found himself struggling to get matters completed so that the firms cash flow could be maintained.

44. HM Customs & Excise had been fully aware of the position. There had never been any intention to defraud them nor to act dishonestly. HM Customs & Excise subsequently had agreed to the Respondent's insolvency voluntary arrangement and the partnership voluntary arrangement completed by him and Ms Squires.

45. The Respondent accepted responsibility for non compliance with the undertaking given to Lloyds TSB Homeloans Ltd. He had not been able to make progress in that matter owing to the pressure of work.

46. The Interverners had not raised the question of C deceased with the Respondent and he was unable to assist with that matter.

47. The Respondent had struggled with the case of J as he had insufficient funds to pay the disbursements. Mr J had complained and had been paid £1,000 by way of compensation.

48. The Respondent had not undertaken any work in connection with the administration of the estates. Nor did he supervise any staff undertaking such work. The Respondent had no knowledge of the Documents at pages 1 to 23 in the Applicant's bundle of documents.

49. With regard to the Respondent 's conveyancing standards, he pointed out that he had been in practice for over twenty years and on average had been dealing with 1,200 matters per annum. The ICO had highlighted only ten cases. The files where criticism had been made amounted to less than half of one percent of the Respondent 's work load. Those files had been continually earmarked for attention but the Respondent had foolishly put them on one side. The Respondent had concentrated on completing current matters.

50. The Respondent believed that he was well respected as a lawyer by his clients, colleagues and professional connections. He was not dishonest and always believed, perhaps naively, that the firm's problems could be overcome.

51. The Respondent and his family had endured a great deal of strain over the previous two years. They had suffered as a result. The Respondent had suffered health problems and had been admitted to hospital for his own safety. He had been divorced.

52. The Respondent had encountered difficulties with his professional indemnity insurance. He had sought assistance in this regard from the OSS which had not been forthcoming and had also asked that the proposed intervention into his firm might be suspended until his insurance difficulties had been resolved. That had been refused. As a result the Respondent had incurred the very large costs of the intervention and his practice had been destroyed. On the day of the intervention the firm had been holding in excess of £2,000,000.00 on client account and every penny had been properly accounted for.

53. Since the intervention the Respondent had not been able to work and the Respondent 's life and that of his family had been devastated.

54. The Respondent had been a good lawyer, hardworking and conscientious, but had become caught up in the downward spiral of too much work and pressure with little or no support.

55. The Respondent believed he still had much to offer the solicitors' profession and was anxious to use his experience as a lawyer. He hoped in the future that he might be able to practise as a supervised assistant solicitor. He hoped that the Tribunal would not consider the imposition of a sanction that would interfere with his ability to practise accepting, as he did, that any Practising Certificate issued to him would be subject to conditions.

56. The Respondent felt that he had been a scapegoat although he fully accepted that whilst under pressure his judgement was clouded.

The Findings of the Tribunal

The Tribunal find the allegations to have been substantiated. On the 22nd April 1999 the Respondent , together with Brian Harrop-Griffiths and Karen Squires, had the following allegations substantiated against him.

The allegations were that the Respondent had:-

(i) acted in breach of the provisions of the Solicitors Accounts Rules 1991 in the following particulars:-

(a) contrary to the provisions of Rules 7 and 8 had withdrawn from client account clients' money other than in accordance with the provisions of the said Rules and had utilised the same for their own benefit alternatively for the benefit of other clients not entitled thereto;

(b) contrary to Rule 3 had failed to pay into clients' account moneys received in respect of clients' affairs;

(c) contrary to the provisions of Rule 11 had failed to maintain in proper order their books of account and to effect reconciliations as by the said Rule required.

(ii) by virtue of the aforementioned had been guilty of conduct unbefitting a solicitor

In 1999 the Tribunal said:-

> "The Tribunal found the allegations to have been substantiated indeed they were not contested. The Members of the Tribunal have given this matter careful consideration and feel that the Respondents were responsible for an extremely serious case of mismanagement which cannot be treated lightly. The Respondents as partners in the firm were responsible for ensuring that the Accounts Rules were observed. The Tribunal feel that the seriousness of this matter should be reflected by the imposition of substantial fines upon the Respondents. The Tribunal accepts that the third Respondent has a lesser responsibility having only become an equity partner in October 1997. The Tribunal ordered the first and second Respondents Brian Harrop-Griffiths and Oliver Moelwyn Davies of c/o Watkins Jones Tribe & Harrop-Griffiths at 45 Walter Road, Swansea SA1 5PN to pay a fine of £10,500 each, being £3,500 each per allegation. The Tribunal further ordered the Respondents to be jointly and

severally liable to pay the costs of and incidental to the application and enquiry to be taxed if not agreed".

On the 8th March 2001 the following allegations against the Respondent were found to have been substantiated the allegations were that the Respondent had:-

(i) been guilty in delay of execution of clients affairs, alternatively had failed to act with reasonable expedition therein.

(ii) alternatively failed with reasonable expedition to reply to correspondence and enquiry addressed to him by a client and other solicitors instructed by that client.

(iii) failed to provide adequate information to a client in respect of costs to be charged in that client's affairs.

(iv) failed to deliver to a client the client's papers and or other documentation the subject of request by the client.

(v) delayed alternatively failed with reasonable expedition in the submissions of bills of cost to a client in respect of matters completed.

(vi) contrary to Rule 11 of the Solicitors Accounts Rules 1991 failed to keep an adequate record of bills of costs and or information of costs delivered.

(vii) had failed to operate any adequate complaints handling procedure in respect of client's affairs.

(viii) by virtue of each of the aforementioned had been guilty of conduct unbefitting a solicitor.

In March 2001 the Tribunal said:-

> "In 2001 the Respondent appeared completely to have failed to grasp the nettle and to put right earlier failings. There was no doubt that the Respondent had put his client to considerable inconvenience and anxiety and had caused a great deal of trouble and expense to his own professional body which was obliged to try to rectify the position so far as the lay client was concerned. Such behaviour served seriously to undermine the good reputation of the solicitors' profession. The Tribunal have taken into account the fact that only in 1999 had the Respondent had allegations of serious breaches of the Solicitors Accounts Rules substantiated against him
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> The Tribunal had concluded that the Respondent 's failures were so serious that he was not fit to continue to practise as a solicitor. The Tribunal ordered that the Respondent be suspended indefinitely from the Roll of Solicitors and further ordered that he pay the costs of the application and enquiry fixed in a sum".

In April 2002 the Tribunal was deeply concerned to find further allegations to have been made against the Respondent . It was the third occasion on which he had been required to appear before his own professional Disciplinary Tribunal.

Although all of the allegations were serious and served seriously to prejudice the good reputation of the solicitors' profession the Tribunal take the view that the Respondent's mishandling of clients' monies has been in breach of the fundamental requirement that solicitors regard clients money to be sacrosanct. It is a requirement of a solicitor that he handles clients' money in a way which is fair and proper and that he exercises a proper stewardship over clients monies. The Tribunal is sure that this has not been the case in this matter. The Tribunal is compelled to reach the conclusion that the Respondent has not acted with the probity, integrity and trustworthiness required of a member of the solicitors' profession. In the circumstances it is right that in order to protect the public and the good reputation of the solicitors' profession the name of the Respondent should be Struck off the Roll of Solicitors.

It is right that the Respondent should pay the costs of and incidental to the application and enquiry. The Tribunal noted that the Applicant's costs inclusive of value added tax and disbursements amounted to £2,251.50 and the costs of the Investigation and Compliance Officer of the OSS totalled of £14,728.33. The Tribunal considered it right that a fixed order for costs should be made the total sum, incorporating those two figures, being £16,979.83.

DATED this 19th day of June 2002

on behalf of the Tribunal

A. G. Gibson
Chairman