

IN THE MATTER OF GERALD EDWARD MARSHALL BEENEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J P Davies (in the chair)  
Mr. J N Barnecutt  
Lady Bonham-Carter

Date of Hearing: 2nd July 2002

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors' Act 1974

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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 SS2 6HZ on 19<sup>th</sup> December 2001 that Gerald Edward Marshall Beeney of Little Common, Bexhill-on-Sea, East Sussex, 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 against the Respondent were as follows:

- (A) Until May 2000
- (i) The Respondent acted in breach of the Solicitors Accounts Rules 1991 in that:
    - (a) in breach of Rule 11 of the said Rules no reconciliations in respect of his accounts were carried out as by the said Rule required;
    - (b) in breach of Rules 7 and 8 of the said Rules, the Respondent withdrew from clients account money other than in accordance with the provisions of the said Rules and utilised the same for his own alternatively for the benefit of other persons not entitled thereto.

- (B) From May 2000
- (ii) Contrary to the provisions of the Solicitors Accounts Rules 1998:
    - (a) failed to remedy breaches of the Accounts Rules identified and made known to him, such remedy to be effected pursuant to the provisions of Rule 7;
    - (b) failed contrary to the provisions of Rule 32 to keep adequate accounting records or to effect reconciliations or prepare statements as by the said Rule required.
- (C) Contrary to the provisions of Practice Rule 13 of the Solicitors Practice Rules 1990 failed to provide for adequate supervision of staff in his practice as a solicitor whilst absent therefrom.
- (D) Contrary to the provisions of Section 34 of the Solicitors Act 1974 failed to deliver alternatively failed with reasonable expedition to deliver to The Law Society Accountant's Reports in respect of his practice as a solicitor as by the said Section required.
- (E) Failed to take action upon the intended closure of his practice in accordance with the provisions of the Guide to Professional Conduct of Solicitors in his failure promptly to inform all clients of the firm who might be affected by such closure.
- (F) By virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.

By a supplementary statement of Gerald Malcolm Lynch dated 18<sup>th</sup> April 2002 further information was provided in relation to allegation (D).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 2<sup>nd</sup> July 2002 when Gerald Malcolm Lynch solicitor and consultant with the firm of Messrs Drysdales of Cumberland House, 24/28 Baxter Avenue, Southend-on-Sea SS2 6HZ appeared as the Applicant and the Respondent was represented by Miss Moira Sofaer of Counsel.

The evidence before the Tribunal included the admissions of the Respondent to allegation (A), (B)(ii)(b), (D) and (E) subject to submissions. A bundle of documents (GEMB1) and part of a letter dated 27<sup>th</sup> June 2002 (GEMB 2) from Russell-Cooke solicitors to Miss Sofaer was handed in at the hearing on behalf of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Gerald Edward Marshall Beeney of Little Common, Bexhill on Sea, East Sussex, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 2<sup>nd</sup> day of July and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £6,069.66.

The facts are set out in paragraphs 1 to 20 hereunder: -

1. The Respondent, who was 67 years of age, was admitted as a solicitor in 1961. His name remained on the Roll of Solicitors.

2. At all material times the Respondent was in practice on his own account under the style and title of Beeney & Co at The Old Wheel House, 31-37 Church Street, Reigate, Surrey.
3. On 23<sup>rd</sup> October 2001 the relevant Committee of the OSS for and on behalf of The Law Society resolved to intervene in what remained of the practice of the Respondent and directed that application be made to the Tribunal in respect of the following matters.
4. The Respondent failed to file Accountant's Reports in accordance with the provisions of Section 34 of the Solicitors Act 1974.
5. In respect of the accounts for the year ending 31<sup>st</sup> August 1999 a report was due on 28<sup>th</sup> February 2000. The time for delivery of the report was extended until 31<sup>st</sup> May 2000. The report was delivered on 8<sup>th</sup> May 2001 i.e. eleven months late.
6. In respect of the accounts for the year ending 31<sup>st</sup> August 2000 the Accountant's Report was due on 28<sup>th</sup> February 2001. The said Report was delivered on 8<sup>th</sup> May 2001 i.e. two months late.
7. A Cease to Hold Report for the period ending 27<sup>th</sup> July 2001 when the Respondent ceased practice was due to have been filed but at the date of the hearing remained extant.
8. On 20<sup>th</sup> December 2000, a Report of the Monitoring & Investigation Unit of The Law Society was delivered in respect of the Respondent's practice. An inspection had taken place from October 2000. The following relevant matters emerged from that inspection:
  - (a) office account was substantially in debit;
  - (b) the books of account were not in compliance with the Solicitors Accounts Rules as client account reconciliations had not been carried out, nor statements prepared as required by the Rules since July 1999;
  - (c) there was a shortage on client account in the sum of £9,375.32 in respect of overpayments and overtransfers.
9. The largest of the overpayments was set out in detail in the Report as follows:
 

Mr B - £4,119.28
10. The Respondent acted for Mr B in connection with a property sale and purchase. On 22<sup>nd</sup> October 1999 the client ledger account for the purchase was charged with three client account payments totalling £94,714.14 when only £90,594.86 stood to its credit, thereby creating a debit balance of £4,119.28.
11. The Respondent attributed the overpayment to an error which resulted in a payment being made to the client when it should have been recovered from him.
12. The resultant shortage remained unrectified at the date of the Report. In a note dated 11<sup>th</sup> December 2000 the Respondent stated:

"As at today's date I cannot effect an immediate transfer of funds due to the office account being markedly overdrawn. I have requested reimbursement from the clients..."

13. On 12<sup>th</sup> January 2001 the OSS wrote to the Respondent for explanation in respect of the apparent breaches of the Solicitors Accounts Rules. Response thereto was made as follows:
- (a) On 22<sup>nd</sup> January 2001
- (i) the Respondent's book keeper had departed prematurely and a replacement had not been easy to find;
  - (ii) the Respondent had suffered physical and mental ill health;
  - (iii) the Respondent had realised his pension investment to invest in office account and he would lose his home as a result of what had happened;
  - (iv) he was not able to replace the shortage on client account until disposal of his practice and sale of his flat. The Respondent expected to recover the overpayment;
  - (v) the overtransfers had been due to bank error.
- (b) On 22<sup>nd</sup> February 2001  
The accounts of the firm for the year ending 31<sup>st</sup> August 1999 and 31<sup>st</sup> August 2000 had been approved by the Respondent and refund of £4,119.28 made to client account.
- (c) 1<sup>st</sup> March 2001  
The draft accounts had been signed. All credits to client account had been corrected save in respect of one overtransfer.
14. In the light of these responses, the OSS wrote to the Respondent on 16<sup>th</sup> March 2001 requesting filing of the firm's accounts and requiring documentary evidence of the correction of the client account shortage.
15. On 21<sup>st</sup> March 2001 the OSS received a telephone call from the Respondent's secretary. The Respondent was sick and would not be in the office until 26<sup>th</sup> March. The OSS granted an extension for response to the earlier letter.
16. On 30<sup>th</sup> March the Respondent wrote to say that he had still not been able to file the overdue accounts and indeed had been hospitalised as a result of stress. Rest had been prescribed and the Respondent would be away from his office for a period to 10<sup>th</sup> April. On 8<sup>th</sup> and 9<sup>th</sup> May the Respondent telephoned the OSS in relation to the overdue accounts. The accounts were as hereinbefore indicated filed on 8<sup>th</sup> May. This was upon receipt of the Respondent's letter of 4<sup>th</sup> May 2001 in which the following relevant matters were addressed:-
- (a) his absence from the office had been medical necessity rather than a holiday. The Respondent's secretary was an experienced legal secretary. The Respondent shared office premises with another firm who would be ready to help in respect of a query or problem. If necessary, the Respondent would have instructed another firm;
  - (b) the Respondent had only on 4<sup>th</sup> May found that his accountants had not filed the accounts as required. He was seeking explanation from his accountants as to why this was;

- (c) the Respondent intended to close his practice at the end of May and to sell his flat. He was in difficulty with the current insurance rules as to run-off cover.

In a letter of 10<sup>th</sup> May 2001 the Respondent further addressed the question of his accounting practice.

17. The matter was placed before the Compliance & Supervision Committee of the OSS on 16<sup>th</sup> May 2001. At that meeting, the Committee decided in the light of the Respondent's intention to close the practice and also on the basis that the shortage identified in the MIU Report had been replaced and the Accountant's Reports had been filed, that the matter should stand over, insofar as to whether or not there should be intervention, for three months to allow the Respondent to bring his practice properly to a close but otherwise to take no further action. This resolution was on the premise of proper steps being taken to close the practice and replacement of the shortage. The Respondent was advised of the Committee decision in a letter of 18<sup>th</sup> May 2001.
18. On 22<sup>nd</sup> May the Respondent wrote to say he was in difficulty through lack of funds in replacing the balance of the shortage. He repeated his undertaking to correct the situation out of the proceeds of sale of his flat, which he anticipated would be completed in mid-July.
19. On 20<sup>th</sup> June the OSS wrote again to ask for confirmation that the shortage in client account had been replaced and that documentary evidence of this should be provided. It was not received.
20. The Monitoring & Investigation Unit undertook a further inspection of the Respondent's books and reported on 22<sup>nd</sup> August 2001. Inter alia the following relevant matters emerged therefrom:
- (a) at the date of the earlier Report, the client account shortage had not been replaced. No evidence of replacement of the shortage had since been received;
  - (b) there had been a meeting with the Respondent. The Respondent stated he had closed his practice on 27<sup>th</sup> July 2001;
  - (c) the Respondent had not written to all clients stating that the firm had closed as he was waiting for a letter from an insurance company in respect of run-off cover. He could not dispose of client files until he received that letter.
  - (d) the Respondent had in his client bank account approximately £6,000 of which £4,000 belonged to an identified client, but the Respondent did not know to which clients the remaining £2,000 related. He would need to investigate the position;
  - (e) the Respondent expected to be able to submit a Cease to Hold Accountant's Report by mid-October;
  - (f) the Respondent had not been able to sell the goodwill of his practice and was in discussion with another firm with a view to provision of storage facility;
  - (g) the Respondent said he had submitted evidence of payment of a substantial proportion of the shortage except for an amount of £1,414.75 which he was replacing "today" (16<sup>th</sup> August 2001). The Respondent was unable to show the MIU Officer any books of account and agreed to provide documentation.

At the date of the Report, this documentation had not been disclosed or provided;

- (h) the Respondent could not afford the premium requested for run-off cover to enable him to close his sole practice.

### **The Submissions of the Applicant**

21. In relation to allegation (B)(ii)(a) the position regarding the breaches of the Accounts Rules had still been unsatisfactory to a degree at the time of the second inspection and it therefore followed that there had been a failure to remedy the breaches. It was accepted that there might well be mitigation put forward in that regard.
22. In relation to allegation (C) the Respondent would say that Miss T from the adjoining firm of solicitors would be available and willing to deal with any problems.
23. Practice Rule 13 however said that supervision was required. The Respondent should have arranged for another solicitor to be present at his office at appropriate times during the day, for example between certain hours.
24. It was not enough to say that help was available if "needed." A legal secretary was not a solicitor and might not realise the circumstances in which intervention was needed. The secretary had been left to make the decision herself as to whether or not a problem had arisen.
25. In relation to the admitted allegations the Tribunal was asked to note that no client account reconciliations had been carried out nor statements prepared for well over a year before the first inspection.
26. The Respondent had said that he had only found out on 4<sup>th</sup> May 2001 that his accountants had not filed the accounts as required. That went to mitigation but in the submission of the Applicant it was the obligation of the solicitor under Section 34 of the Solicitors Act 1974 to ensure that accounts were filed. The Law Society had not received the accounts in accordance with the statutory requirements.
27. The Compliance & Supervision Committee had on 16<sup>th</sup> May 2001 made a reasonable and sensible proposal. Unhappily the Respondent had already been in breach of the condition in that the balance of the shortage had at that time been replaced.
28. In relation to allegation (E), which was admitted, the Applicant accepted that the Respondent had had difficulties in relation to insurance.
29. There had been a series of letters to the Respondent requesting documentary evidence of the replacement of the cash shortage. This evidence had not been received from the Respondent to date.
30. A letter to Counsel for the Respondent dated 27<sup>th</sup> June 2002 (GEMB2) from Russell-Cooke solicitors, the Intervention Agents, said:
  - "1. At the time of the intervention there were 13 ledgers showing a balance due to clients of £5,306.45. The funds on client bank account were £5,346.45. The

bank balance was not affected by uncleared payments or receipts and accordingly showed a client account surplus of £40 against the aggregate of the ledgers. It has not been possible to attribute this surplus at present.

.....I can confirm that we have not received any complaint from a client that funds due to them have not been paid although as you will understand it does not necessarily follow that these funds are not due to clients."

31. The Applicant had no evidence of any claim by clients nor of any claim or payment to or by the Compensation Fund.
32. The shortage on client account had still existed at the time of the second Monitoring & Investigation Unit Report but the Applicant was content to accept that there was now no continuing shortage.

### **The Submissions on behalf of the Respondent**

33. A written statement of the Respondent to be signed and dated 2<sup>nd</sup> July 2002 was before the Tribunal. A bundle of documents (GEMB1) which included client ledger records was handed in to the Tribunal.
34. In addition to the ledgers the letter from Russell-Cooke dated 27<sup>th</sup> June 2002 (GEMB2) showed that there was no continuing shortfall.
35. The Respondent had had a very parochial office in Reigate which was located over shops. It had a turnover of some £60,000 per annum.
36. Many of its clients were interlinked and the Respondent was recommended from client to client.
37. In relation to allegation (C), the plan attached to the Respondent's statement showed that these were small first floor premises. Miss P's room was next to the Respondent's room with a shared reception.
38. The rooms were on the same corridor without locks on the doors. The Respondent and Miss P could not have been closer if they were working for the same firm.
39. The Respondent's secretary had had his fax and telephone numbers and could contact him but if immediate action was needed she would go to Miss P.
40. The Respondent had sorted out his files before he went and this was not a litigation practice where urgent matters would arise. The Tribunal was referred to the article contained in GEMB1 from SOLO [publication for sole practitioners] of January 2002 regarding the supervision of small practitioner offices.
41. The Respondent had had working staff in his office and a fully qualified solicitor nearby. It was submitted that a practitioner in this situation had to use his common sense. A letter from Miss P dated 3<sup>rd</sup> September 2001 which was before the Tribunal indicated how cramped the premises were.

42. There was not strictly an arrangement for Miss P to come and look at the post. The Tribunal was referred however to the Respondent's letter to the OSS of 10<sup>th</sup> May 2001 in which he had written:

"With regard to my absence during the first week of April, I would have employed a locum had the practice been active but I have been turning work away for some time and concentrating on the administrative side of closing the practice. My relationship with Miss P has always been an amicable one and hence the question of remuneration for her supervision did not arise. I have always been available to reciprocate had the need arisen."

43. The Tribunal was asked to look at the nature of the practice, the length of absence and the information given to clients. This was a very small practice and an awful lot of information would pass by word of mouth. In the context of where the Respondent was at the time the arrangements were sufficient. There had not been a single complaint or query from a client.
44. This kind of informal arrangement would not be enough for a litigation practice but for a practice dealing with wills, probate and conveyancing covering a week's absence it was submitted that the man in the street would think the arrangement was sufficient.
45. With regard to allegation (E), the Respondent had been running down his practice. From November 2000 he had been negotiating with a few firms and had been saying that he would be retiring.
46. The Tribunal had information before it to show how the Respondent had been caught by the insurance difficulties.
47. The Tribunal was asked to note the draft letters contained in GMBE1 which the Respondent had prepared ready to go out to clients. The November 2001 draft had been prepared immediately before the intervention when the Respondent had finally known to which firm his files would be going. However because of the intervention it had never been sent.
48. The Respondent had become desperately trapped with the problems from the insurers and the difficulties regarding the destination of the files.
49. Clients had not been suffering. The files had been with Miss P and the clients could attend the office.
50. Despite effectively a nervous breakdown the Respondent had still gone into the office. He had been there all of the time until the end of July 2001 and in August, September, October and the first part of November the Respondent continued to visit the office and go through the post although not every day.
51. Miss P and the secretary were there and knew where he was. Miss P was giving him every assistance.



52. In addition the Respondent's clients were local people who knew where he was. There had not been a single query to this day by anyone disturbed by way of the closure of the Respondent's office.
53. Although the Respondent had not complied with the Rules he had never closed a practice before and no problems had been caused to the public.
54. In relation to allegation (D) the Respondent had been "running around" to meet the deadline for submission all the weekend and as shown from his letter of 1<sup>st</sup> April 2001 to his accountant the Respondent had every reason to believe that his instruction to file the accounts had been carried out. His accountants had never slipped up before.
55. The letter of 1<sup>st</sup> April 2001 stated that there remained a debit of £1,291.52 on client account and this would have been dealt with by a note on the accounts to that effect.
56. The Respondent had been unable to meet that final sum until he had sold his flat. Every other matter had been resolved.
57. The outstanding shortfall had been due to a misunderstanding relating to Land Registry fees which the Respondent could not meet until he received the proceeds of sale of his flat.
58. Every problem had been brought to the attention of The Law Society by the Respondent and his book keeper.
59. Only on 4<sup>th</sup> May had the Respondent realised that the accounts had not been filed and as shown by the note of the telephone call with the office dated 9<sup>th</sup> May 2001 the Respondent had acted very quickly to get in contact with The Law Society. By 10<sup>th</sup> May the situation had been remedied and the accounts delivered.
60. In relation to allegation (F), as at 1<sup>st</sup> April 2001 the Respondent had had every reason to hold his head up with pride.
61. He had been in practice for 40 years and had an unimpeachable reputation. He had been trying to pull his book keeper into line and had been preparing to sell his business with some goodwill.
62. During his 40 year career no client had ever challenged his professional competence and this was a source of pride.
63. The Respondent had also brought in a competent book keeper in November and December 2000 because he wanted to get his books straight. That was when the skeletons in the closet began to rattle.
64. All the errors were known as the result of the Respondent indicating them and these were inadvertent errors due to mismanagement.
65. The Respondent had not been familiar with every one of the closure rules and the Tribunal was asked to put what had occurred in the context of who he was.

66. The events had nearly broken him and he had now no money.
67. The Tribunal was asked to note that the new book keeper had been brought in before there had been any sign of The Law Society involvement.
68. During the period when the Respondent had anticipated retiring he had turned away £15,000 worth of business whilst still being responsible for all the outgoings of the office.
69. In the future the Respondent never wanted anything to do with accounts but would like to practise as a locum. He had effectively not practised since July 2001.
70. The Respondent had no immediate prospects of employment as the case before the Tribunal had been overwhelming and distressing for him.
71. The Respondent's strengths lay with his work for clients. The quality of his work had never been brought into question. As a locum he would use these strengths but would never get into a muddle again. There would be no question of a repeat of these matters.
72. Remaining on the Roll of Solicitors was a matter of tremendous importance to the Respondent.
73. In the context of what could happen to members of the public, the Respondent's actions had not led to damage. Many of the breaches were technical with substantial mitigation. There had been nothing which would alarm clients or which could be described as wicked.
74. The Respondent had no capital savings or furniture. In practical terms there would be no ability to enforce costs against him.

### **The Findings of the Tribunal**

75. Allegations (A), (B)(ii)(b), (D) and (E) were admitted and the Tribunal found these to have been substantiated.
76. In relation to allegation (B)(ii)(a) the shortage on client account had remained for a lengthy period. It had not been remedied until after the involvement of The Law Society. This was a clear breach which the Respondent had not been in a position to remedy. It had been noted in the inspection in October 2000 but was not remedied until August 2001. The Tribunal found allegation (B)(ii)(a) proven.
77. In relation to allegation (C) it was accepted that the Respondent's office and that of Miss P were very close and that indeed they had shared reception facilities. However there had been no evidence that the Respondent had contacted his office daily nor that he had instructed Miss P to look at his post or formally to attend his office. It was accepted that Miss P was available to help if necessary. The Tribunal found allegation (C) proven but did not regard it as a very serious breach of Practice Rule 13.

78. In relation to allegation (F) the Tribunal had noted and accepted the submissions regarding the Respondent's long years of practice and his good reputation. Nevertheless a number of serious allegations had been substantiated against him. As a sole practitioner he had great responsibility for the administration of his practice and in particular for his accounts and it had to be understood that however high the quality of a solicitor's legal work, his accounts must be properly dealt with. Considering the totality of the matters which had been substantiated against the Respondent the Tribunal found allegation (F) proven.
79. The Tribunal had therefore found all the allegations, which were serious, proven. These had been partly admitted. The Tribunal had considered very carefully the appropriate penalty to impose in this case. The Tribunal noted that there had been no dishonesty alleged or found against the Respondent and that no clients had suffered loss. It was sad that the Respondent should be appearing before the Tribunal after 40 years in practice. Whilst not doubting the Respondent's concern for his clients, the Tribunal considered that he had not shown sufficient concern regarding his professional responsibilities or his duties to his clients in accounting matters. The public was entitled to be protected from those failings. The Tribunal noted that the Ceased to Hold accountant's report remained outstanding. It was clear from the first MIU Report that the Respondent had allowed his accounts to fall into serious confusion with no client account reconciliations carried out for over a year. The Tribunal considered that it was not appropriate for the Respondent to be allowed to continue in practice and the Tribunal would impose an indefinite suspension upon the Respondent. This did not mean that in due course the Respondent could not apply to the Tribunal for reinstatement nor did it mean that the Respondent could not work in a legal environment although this would be of course subject to permission from The Law Society.
80. The Tribunal noted the submissions which had been made on behalf of the Respondent in relation to costs but having found all of the allegations proven it was right that the Tribunal order the Respondent to pay the Applicant's costs. It was for others to decide whether those costs should be enforced.
81. The Tribunal therefore ordered that the Respondent Gerald Edward Marshall Beeney of Little Common, Bexhill-on-Sea, East Sussex, solicitor be suspended from practice as a solicitor for an indefinite period to commence on 2<sup>nd</sup> day of July 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £6,069.66.

DATED this 30<sup>th</sup> day of September 2002

on behalf of the Tribunal

J P Davies  
Chairman