

IN THE MATTER OF ANNE CHRISTINE DIXON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A. G. Ground (in the chair)
Mr L. N. Gilford
Lady Maxwell-Hyslop

Date of Hearing: 30th May 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 George Martin Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 14th January 2002 that Ann Christine Dixon of Oxford Street, London, (now of Worple Way, Richmond, Surrey) solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondent were that she had been guilty of conduct unbecoming a solicitor in that she:-

- (i) Failed to comply with the decision of an Adjudicator dated 30th September 1999 directing the undertaking of "the necessary work to conclude the administration of the estate, respond to the complainant's enquiries and produce and full and final bill and estate accounts within one month of this decision";
- (ii) Contrary to Rule 1 of the Solicitors Practice Rules 1990 her professional conduct was such that it compromised or impaired or was likely to compromise or impair any of the following namely her independence or integrity; a person's freedom to instruct a solicitor of his or her choice; her duty to act in the best interest of his client; her good repute or that of her profession; her proper standard of work.

By a Supplementary Statement of George Marriott dated 16th May 2002 the following further allegations were made against the Respondent namely that she had been guilty of conduct unbecoming a solicitor in that she:-

- (iii) Failed to keep her books of account properly written up contrary to Rule 32 of the Solicitors Accounts Rules (the Rules);
- (iv) drew monies out of client account for her benefit or for the benefit of another;
- (v) misappropriated client funds;
- (vi) failed to honour an Undertaking given to the purchasers' solicitors to discharge a mortgage on the completion of a sale;
- (vii) paid monies to a third party without her client's authority;
- (viii) failed to comply with the decision of an Adjudicator dated 31.10.01.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 30th May 2002 when George Martin Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent.

By letter to the Applicant faxed on 19th May 2002 a copy of which was before the Tribunal the Respondent waived the time limits for the service of the supplementary statement. The Tribunal consented to the abridgement of service of the supplementary statement.

At the conclusion of the Hearing the Tribunal ordered that the Respondent Ann Christine Dixon of Worple Way, Richmond, Surrey (formerly of Oxford Street, London) solicitor be struck of the Roll of Solicitors and they further ordered that she do pay the costs of and incidental to the application and enquiry fixed in the sum of £11,261.18.

The facts are set out in paragraphs 1 to 25 hereunder:-

1. The Respondent born in 1945 was admitted as a solicitor in 1971 and her name remained on the Roll of Solicitors.
2. The Respondent carried on practice on her own account under the style of Dixon & Co., at 145 Oxford Street, London W1D 2JD and is also a partner in the firm of Dixon Emberton practising from 240 Stamford Hill, London, N16 6TT.
3. G died on the 12th December 1993. The net value of her estate for probate purposes was approximately £339,000. Probate was granted on the 24th June 1994. The Respondent was the sole executrix under G's Will. G's daughter RPM was the sole beneficiary.
4. RPM initially complained to the Solicitors Complaints Bureau about the delay in administration of the estate in April 1995. Between then and 1997 the OSS as successor to the Solicitors Complaints Bureau continued to receive complaints from RPM about the extent of the charges for the administration of the estate and the delay in concluding the administration of the estate. RPM was advised by the OSS in early 1998 that they would not be taking the complaint any further as the result of which

RPM referred the matter to the Office of the Legal Services Ombudsman who prepared a report dated November 1998 which reviewed the history of the matter and asked the OSS to maintain “a watching brief” over the administration of the estate until its conclusion.

5. As the result of the OSS’s continued intervention, the Respondent wrote to RPM by letter dated 29th January 1999. In the letter the Respondent agreed to prepare up to date estate accounts and submit her file to the OSS for a remuneration certificate. She also offered the sum of £500 by way of an ex gratia payment. By the next letter dated 9th March 1999 she also sent the estate accounts.
6. When RPM looked at the estate accounts, she was astonished to see that they were identical to the earlier estate accounts, which had been sent by the Respondent and made no reference to missing dividends. Nonetheless she sought the Respondent’s advice as to whether to continue to pursue those outstanding items.
7. In the meantime because the offer of an ex gratia had been made by the Respondent totalling £500 the OSS again decided to close its file 12th March 1999. As the result of the intervention of the Office of the Legal Services Ombudsman by letter dated 27th May 1999 the OSS re-opened the file to maintain their “watching brief” until the Respondent dealt with the outstanding queries on the estate accounts, applied for a remuneration certificate, and so that the OSS could take a view then as to the extent of any compensation due.
8. The Respondent made no further contact with RPM who asked the OSS how they were to progress with the matter by her letter of the 23rd June 1999.
9. By the decision of an Adjudicator dated 30th September 1999 formal directions were made against the Respondent. The following direction was not complied with by the Respondent:-

“I therefore direct the Respondent To undertake the necessary work to conclude the administration of the estate, respond to the Complainant’s enquiries and to produce a full and final bill and estate accounts within one month of this decision”.
10. The Respondent was notified of the decision by letter dated 12th October 1999 but failed to comply with the direction. The enquiries from RPM which remained unresolved were set out in her two letters dated 22nd July 1996 and the 15th March 1999. In summary they amounted to:-
 - 10.1 an explanation for missing off the estate accounts dividends received from four companies;
 - 10.2 to an account of the dividends which should have been received and which RPM assesses at approximately £500;
 - 10.3 why an item had not been included in the estate accounts even though dispatched to the Respondent as long ago as 1994;
 - 10.4 a detailed breakdown of her charges. There was subsequently a remuneration certificate;
 - 10.5 a query over the extent of interest applied to the estate accounts.

11. By letter dated the 21st December 1999 the Respondent promised to address two outstanding queries namely the application for a remuneration certificate and the absence of the dividends.
12. Nothing further was heard from the Respondent with the result that an Adjudicator made an Order referring the matter to the Solicitors Disciplinary Tribunal dated 18th February 2000.
13. The Respondent was notified of this by letter dated the 9th May 2001. She protested initially that she did not know about the decision dated 30th September 1999 but despite a clear and unambiguous letter from the OSS dated 9th May 2001 explaining what was required of her, the OSS received no reply other than an acknowledgement dated 12th June 2001 requesting an extension of time until the end of June 2001 to deal with the outstanding matters.
14. Following notification, an Investigation and Compliance Officer employed by the OSS commenced an inspection of the Respondent's books of account on the 28th November 2001. A copy of his report dated 6th February 2002 was before the Tribunal.
15. As at the 30th September 2001, the Officer discovered that there was a cash surplus in client account totalling £79,172.52. This was the difference between an unallocated bank receipt of £284,725 and overpayments of £205,552.48. As the result the inspection was postponed and books were not written up until the 21st January 2002 when balances were extracted as at the 31st December 2001.

Cash shortage

16. Following the inspection the Officer determined that there was a cash shortage of £77,250.42, which was caused by overpayments totalling £361,975.42 and an unallocated bank receipt of £284,725.00.

Overpayments £361,975.42

17. With regard to the overpayments, the Respondent indicated that she could replace £13,556.18 immediately or shortly but that she could not replace the sum of £274,506.67 being money due from a client R and stated "I could not put it right, he needs a little bit of time".
18. The overpayments were made on seven client matters in varying amounts between £132.18 and £274,506.67 totalling £361,975.42. The largest is exemplified below.
19. The Respondent acted for R in the sale of a property for £248,000, which completed on 6th July 2001. R had a mortgage on the property in excess of £210,000. The mortgage was to be redeemed at completion.
20. A copy of the client ledger is displayed at paragraph 18 which shows that the Respondent paid to R the sums of £25,000 and £151,892.28 in June and July 2001 and purported to discharge the mortgage in October 2001 resulting in a debit balance on client account of £231,256.67 which after two further payments increased to

£274,506.67. As at 15th October 2001, the Respondent still had not redeemed the mortgage. In February 2002 that was still the position and complaint was made via solicitors acting for the mortgagee who confirmed that the Respondent acted for their client in connection with the disposal of R's property and asserted that the Respondent had appropriated the monies.

Unallocated Bank Receipt £284,725.00

21. The Respondent acted for KE in respect of her purchase of property for £650,000, which completed in July 2001. A copy of the client ledger was before the Tribunal. The bank receipt of £284,725 dated 10th July did not relate to that matter and the Respondent was unable to identify to which matter it related. By removing that figure from the client ledger, the client balance on that ledger would be in debit by the difference namely £73,912.57. There was no completion statement on the file nor any request to KE to produce sufficient funds for completion. The Respondent believed that the overpayment was in some way connected with a remortgage of another property but was unable to find the file.

Acting Without Authority

22. The Respondent acted for MH who together with her sister had an interest in an estate. Money coming into the estate after litigation totalled £349,442.50, which was retained in the Respondent's client bank account. MH and her sister requested interim payments on account and the Respondent sought indemnities from them should there be a claim against that money. MH's son represented to the Respondent that he had his mother's authority to collect her cheque and the Respondent provided him with two cheques of £130,000 one made out to MH and the other to her sister. Both MH and her sister complained to the Respondent that no authority had been given and when asked why she had given the cheques to the son indicated that he had been threatening and intimidating and that was the only way she could get rid of him.
23. As the result of the Report, the OSS sent the Respondent a letter dated 14th February 2002 seeking her explanation. Her explanation by letter dated 18th February 2002 in summary was as follows:-
1. The list of client liabilities should not have revealed a cash surplus of £79,000 +.
 2. The bank receipt of £284,725 was correctly put to KE's account but that it was difficult to locate some files.
 3. She would be able to send to the OSS cheques to replace the cash shortage of £2,250 and £742.43.
 4. Overpayments had been made in respect of seven client matters when she should not have been working.
 5. This was compounded by the fact that the books had not been written up.
 6. She understood R's mortgage had now been redeemed and that the matter had not been referred to her insurers.
 7. She agreed that the mortgage had not been redeemed on completion on 6th July 2001 and that £242,403.14 was used to discharge the mortgage on R's other property.
 8. In the normal circumstances this would not have arisen.
 9. She accepted that the unallocated bank receipt of £284,725 did not relate to KE and that she was still trying to trace a file.
 10. She handed the cheque to the beneficiary's son because she felt vulnerable but

normally would have asked for a letter of authority.

11. She was neither dishonest nor reckless.
12. She regretted what had happened and said that it had followed as the result of the death of her domestic partner and that she had no wish or desire to continue to practise on her own.

Failure To Honour Adjudicator's Decision

24. The Respondent Acted for AMS in connection with an estate. Following complaints, an Adjudicator made a decision dated 22nd August 2001 directing the Respondent to pay compensation totalling £2,250; to transfer from office account to client account all money taken from costs during the administration and to deliver a bill for a fee not exceeding £2,000; to apply for a remuneration certificate if requested to do so immediately, to transfer from office account interest on the sum transferred above; to direct that if her clients wished to instruct other solicitors to conclude the matter that the Respondent must be responsible for the costs incurred in them so doing; and to instruct the Respondent to indemnify the estate against the Inland Revenue.
25. The decision was sent to the Respondent by letter dated 24th August 2001. The Respondent did not appeal the decision which became effective by the beginning of September 2001. By letter dated 8th October 2001 the OSS wrote once more to the Respondent seeking her assurance that she had complied with the Adjudication Order but received no reply. On 31st October 2001 an Adjudicator ordered that the matter be referred to the Tribunal.

The Submissions of the Applicant

26. The Respondent had admitted all the allegations but had denied dishonesty as set out in her letter to the Applicant faxed on 19th May 2002 a copy of which was before the Tribunal.
27. In a letter to the Respondent dated 26th April 2002 a copy of which was before the Tribunal, the Respondent had indicated that she wished to be struck off the Roll.
28. The Applicant was not in a position to establish dishonesty against the Respondent but the Tribunal was referred to the case of Bolton in 1994 and the case of SANHI in 2000. In these cases the Divisional Court had indicated that even though dishonesty had not been established the Tribunal was not precluded in certain circumstances from striking a Respondent from the Roll.
29. In the case of SANHI the Court had held that the Tribunal:-

“Had found him guilty of culpable incompetence and taking the legitimate mitigating factors into account had considered that his conduct was so gross as to render him unfit to remain on the Roll of Solicitors. That was a decision which could not be criticised and accordingly the Court was not entitled to interfere with the Order made.”
30. In the case of Bolton, Lord Bingham had said

“If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessary follow in such a case, but it may well.”

31. Clearly it would be wrong for the Tribunal to accede to the wishes of the Respondent and strike her off the Roll simply because she requested this. The allegations must be so serious as to warrant that penalty.
32. In her letter faxed on 19th May 2002 the Respondent had given further explanation regarding the matter of R.
33. The direction of the Adjudicator dated 30th September 1999 had not been complied with by the Respondent.
34. The Respondent’s practice had been intervened.
35. With regard to the overpayments there was no evidence that the Respondent had replaced the £13,556.18p.
36. The overpayment in respect of R had still not been replaced and the mortgage had still not been redeemed.
37. The decision of the Adjudicator dated 22nd August 2001 had not been complied with.
38. A copy of the Compensation Fund defaulter list was before the Tribunal.
39. The matters before the Tribunal showed a catalogue of incompetence and mismanagement by the Respondent.
40. The Intervention Officer had expressed a view that there had been monumental incompetence and inefficiency possibly brought on by personal circumstances.
41. The Applicant did not allege dishonesty against the Respondent but on the evidence it was open to the Tribunal to find the Respondent’s conduct to have been reprehensible and reckless.

The Submissions of the Respondent

42. In addition to the letters sent to the Applicant and referred to above the Respondent had set out submissions in her letter to the Tribunal dated 14th May 2002 as follows:-

“Thank you for your letter of 11th May and I have noted the date of the Hearing. I confirm that I do not intend appearing or being represented and that I admit the allegations made.

I do not intend any disrespect to the Tribunal by non-attendance or non-representation but do so in the interests of saving the Tribunal’s time.

My personal circumstances over the last three years have made it impossible to apply myself to my practice which has suffered. I of course regret the situation but I have completely lost my powers of concentration as a result of the illness and the tragic loss of my Partner in life and in work. I have indeed now lost everything.”

The Findings of the Tribunal

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

Previous Appearance before the Tribunal

44. At a hearing on 22nd April 1999 the following allegations had been substantiated against the Respondent namely that she had been guilty of conduct unbecoming a solicitor in that:-
- (i) contrary to Rule 8 of the Solicitors Accounts Rules 1991 she had drawn money out of client account other than as permitted by Rule 7 of the said Rules; and
 - (ii) she had accordingly utilised clients' monies for the benefit of other unrelated clients.
45. At the hearing on 22nd April 1999 the Tribunal found that although the breach was only technical and there was no dishonesty on the part of the Respondent the Tribunal could not accept that this was a purely unfortunate chain of events. There was a serious error of judgement which a solicitor of twenty five years standing should not have made. The Tribunal could not therefore just overlook it. The Tribunal on that occasion accepted that the building society's behaviour was unhelpful if not actually reprehensible. The Tribunal also found that the OSS had taken far too long to process the case which was in itself a punishment for the Respondent. Nevertheless the Tribunal does not feel that a reprimand would be a sufficient expression of concern and ordered the Respondent to pay a fine of £500 together with costs.
46. At the hearing on 30th May 2002 the Tribunal found the admitted allegations showed a frightening case of incompetence and recklessness. The Tribunal accepted that the Respondent had suffered tragic personal circumstances but she was a solicitor of many years' experience whose failure in her duties towards her clients had reached a level of culpable incompetence. The Tribunal had considered, in addition to the cases referred to by the Applicant, the case of Weston where there had been such a gross abstinence of duty in relation to the compliance with a solicitor's client account obligations that a striking off was the appropriate penalty.
47. This was the second occasion where the Respondent's conduct had been brought before the Tribunal. Her conduct had been reckless over a period of time. Although dishonesty had not been alleged against her her conduct had fallen so far below the standards which the public and the profession were entitled to expect of solicitors that the Tribunal considered that she should not remain as a solicitor. The Tribunal therefore ordered that the Respondent Ann Christine Dixon of Worple Way, Richmond, Surrey (formerly of Oxford Street, London) solicitor should be struck off

the Roll of Solicitors and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £11,261.18.

DATED this 22nd day of August 2002

on behalf of the Tribunal

A G Ground
Chairman