

IN THE MATTER OF GRAHAM JOHN HEWITT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J C Chesterton (in the chair)
Miss T Cullen
Lady Maxwell-Hyslop

Date of Hearing: 25th 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 Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts SG14 1BY on 23rd January 2002 that Graham John Hewitt of Yaxley, Peterborough, Cambridgeshire, 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 he had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) That he failed to keep accounts properly written up contrary to Rule 11 Solicitors' Accounts Rules 1991 and Rules 32 Solicitors' Accounts Rules 1998;
- (ii) that he withdrew monies from client account other than as permitted by Rule 7 of the Solicitors' Accounts Rules 1991 and Rule 22 of the Solicitors' Accounts Rules 1998;
- (iii) that he retained monies on account of costs without delivering to the client a bill or other written intimation thereof contrary to Rule 7(4) Solicitors' Accounts Rules 1991 and Rule 19(2) of the Solicitors' Accounts Rules 1998;

- (iv) that he permitted the same client ledger to be used for more than one client contrary to Rule 11 (1)(b)(i) Solicitors' Accounts Rules 1991 and Rule 32(2)(b) of the Solicitors' Accounts Rules 1998;
- (v) that he did make a payment to the introducer of business contrary to S2 (3) of the Solicitors' Introduction and Referral Code 1990;
- (vi) that he did cause monies to be lodged in client account other than as provided for by Rule 15 Solicitors' Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25th June 2002 when Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts SG14 1BY 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 to allegations (i) to (iv) with mitigation.

At the conclusion of the hearing the Tribunal ordered that the Respondent Graham John Hewitt of Yaxley, Peterborough, Cambridgeshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 25th day of June 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,926.13p.

The facts are set out in paragraphs 1 to 16 hereunder:-

1. The Respondent born in 1947 was admitted a solicitor in 1973. His name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of G J Hewitt & Co. at New England Chambers, New England House, 555 Lincoln Road, Peterborough, PE1 2PB.
3. On the 14th August 2001 an inspection of the Respondent's books of accounts was commenced by a Law Society Investigation Officer, Mr Carruthers, and a copy of his Report dated the 24th September 2001 was before the Tribunal. This revealed the following problems –

Allegation (i) – Failure of keep accounts properly written up

4. The Respondent's client matter list printed on the 14th August 2001 but relating to the position as at the 31st July 2001 contained 23 debit balances totalling £121,936.48. The Respondent claimed that these were not cash shortages but had been caused by unposted or incorrectly posted entries and this proved to be the case as far as the four largest debit balances were concerned.
5. The Respondent had employed an outside firm Q & Co. to maintain his bookkeeping from 1st October 1998 onwards and perform the required reconciliations. Their month end package for July 2001 arrived with the Respondent on the 15th August and was

checked by Mr Carruthers. His examination showed that the client matter list included 37 debit balances totalling £170,895.54 and 50 office credit balances totalling £25,167.47. The client bank reconciliation included 65 unallocated payments totalling £274,698.40, 36 unallocated receipts totalling £378,353.81, 100 unreconciled receipts totalling £422,583.36 and 73 unreconciled payments totalling £161,779.93.

6. The Accountant's Reports for the years ending 31st March 1999 and 31st March 2000 each revealed liabilities to clients exceeding cash available by £132,532.12 (1999) and £75,508.25 (2000) respectively. Each of the two accounts was qualified by reference to a failure to carry out the requisite reconciliations every five weeks of liabilities to clients with cash available to meet those liabilities. As at the date of the inspection, Mr Carruthers calculated that there was a minimum cash shortage on client account of £56,785.58 but because of the unsatisfactory state of the accounts was not able to find the reason for this.
7. The Respondent's explanation for the state of the accounts was that Q & Co. had not carried out the work properly. He expanded upon this in his letter of the 4th October 2001.

Allegation (ii) Making withdrawals from client account other than as permitted by the Solicitors Accounts Rules.

8. As stated above, it proved difficult for Mr Carruthers to ascertain the reason for the client account shortage. However, in one particular matter in connection with the W Trust, the client ledger was charged with an amount of £14,500.00 in respect of a telegraphic transfer on the 3rd March 2000 to M Trust when no funds were available. This created a debit balance of £14,500.00 which was only rectified at the end of the month by two transfers on the 30th and 31st March to the required amount.

Allegation (iii) – Retaining monies for costs without delivering a bill or other written intimation.

9. The Respondent acted for the executors of the Estate of Miss W B Deceased in which he and Mr R, another solicitor, were appointed executors. Mr Carruthers discovered, and the Respondent agreed, that 14 transfers totalling £46,721.41 had been made from client to office account in respect of costs and that there had been nine receipts into office account totalling the same amount, but with the individual amounts and dates being different. Mr Carruthers' enquiries revealed that the other executor, Mr R, had not received any of the bills, although the completion statement had referred to one of them in the amount of £1,410.00

Allegation (iv) – Use of the same client ledger for more than one client

10. Mr Carruthers' inspection revealed one client ledger which dealt with two separate conveyancing transactions involving different clients, in each of which the firm had also acted for the lender.

Allegation (v) – Making an improper payment to the introducer of the client.

11. This allegation arose out of a personal injury matter concerning a client Mr K who was introduced to the firm by Messrs. D H & Co. Accountants. The two partners in this firm, Mr D and Mr H were involved in a Limited Company called DHLS in which they each held 25% of the shares. The balance of the shares were held by Mr H G and another Mr D. The client ledger in Mr K's case revealed that damages were received in the sum of £2,260.00 on the 27th March and were paid out to the introducers of the business D H & Co. two days later. The costs in the matter of £2,145.00 were received into client account (as opposed to office account where they should have gone) on the 26th July 2001 and were paid out to the Company DHLS on the 2nd August 2001. On the face of it these transactions revealed a breach of the Solicitors Introduction and Referral Code 1990 Section 2(3) which prohibits solicitors from rewarding introducers by the payment of commission or otherwise.

Allegation (vi) – Lodging monies in client account other than as permitted by the Solicitors' Accounts Rules

12. On 17th August 2001, the Respondent said that a suspense account had been opened and maintained in the clients' ledger when corrective action had been taken in respect of the bookkeeping problems.
13. The suspense account showed an undated opening balance of £28,548.74 debit.
14. On 24th March 2000, the ledger was credit with an amount of £45,000.00 which was annotated ' GJH balance'. The Respondent said that following his accountant's advice, he had lodged £45,000.00 in client bank account to rectify a number of debit balances that were extant on the clients' ledger or had been transferred to and aggregated in the opening balance on the suspense account.
15. The Respondent said that he had subsequently been told by Q & Co. that his client account was "overfunded" and he did not need the £45,000 in client bank account. The Respondent said that he had erred on the side of caution and left the money in client bank account.
16. The Respondent was written to on 3rd October 2001 and asked to give his explanation for the matters revealed by the inspection. He responded by way of a letter dated 4th October 2001. The matter was considered by the Adjudication Panel on 8th October 2001 and they resolved, inter alia, to intervene into the Respondent's practice and to report his conduct to the Tribunal.

The Submissions of the Applicant

17. The Respondent was not now practising and his statement which was before the Tribunal had invited the Tribunal to exercise the ultimate sanction.
18. The Applicant did not put the matter forward as a case of deliberate fraudulent activity but rather one where a chaotic situation led to serious breaches.
19. The Applicant did query however whether an honest solicitor would have failed to send bills to his co-executor.

20. The Respondent had admitted allegations (i) to (iv) and denied allegations (v) and (vi).
21. The Respondent would rely on the evidence of Mr Carruthers as contained in the documents which had not been challenged by the Respondent.
22. In relation to allegation (i) it was clear that the firm appointed by the Respondent to carry out the bookkeeping function for him had not carried it out properly. The Respondent had deflected the blame but had accepted the responsibility. It was submitted that the Respondent ought to have been put on notice by the qualified Accountant's Reports.
23. It was significant that the client account reconciliation at 31st July 2001 contained 65 unallocated payments, 36 unallocated receipts, 100 unreconciled receipts and 73 unreconciled payments. The Investigating Accountant had found a chaotic situation.
24. The telegraphic transfer from the W Trust client ledger was an improper withdrawal which had existed for some four weeks.
25. In relation to allegation (v) the Respondent had said that the person who carried out the work was HG and he regarded DHLS as HG's firm. The Applicant said that this was not amongst the most serious of the allegations.
26. The Respondent had asked the Tribunal not to award costs as he was subject to an IVA but the Applicant would be seeking an order for costs.

The Submissions of the Respondent

27. The Submissions of the Respondent were contained in his statement in reply to the Rule 4 statement.
28. In the statement the Respondent gave the Tribunal details of his current personal situation including information regarding his psychiatric ill health.
29. The Respondent said that he was prepared to accept that the allegations set out were such that his name should be struck off the Roll of Solicitors.
30. The Respondent admitted allegations (i) to (iv) subject to mitigation set out in his statement but denied allegations (v) and (vi).
31. In relation to allegation (i) the Respondent explained that he had employed Q & Co. to complete his client account and office account records but that it had become clear that the accounts were not being kept properly.
32. The Respondent wrote
"At the inspection in August 2001, it was clear both to myself, Mr Carruthers and to my accountants, that there was an apparent cash shortage and it was inconceivable that my client account could be short of approximately 25% of its current value. Throughout this time and at the time of the inspection, Kidsons [The Respondent's accountants] were embarking on a further accountancy exercise to highlight the

errors, duplications of postings and duplications of transfer which had clearly occurred by the negligence of Q & Co. This accountancy exercise has presently cost in excess of £16,000.

33. A reconciliation of client account has now been achieved by Kidsons and a separate Accountant's Report will be sent to the Tribunal for the hearing but on the face of the papers as are now available, there were errors amounting to £92,243.50 as at 30th September 2001 which left an error on client account of £4,963.64
34. This reconciliation is to be sent to the SIF and it is my intention to arrange with the SIF over a period of time to repay this amount should claims against client account be such as to render it as a debit balance.
35. In accepting the allegation, I would mitigate the allegation by saying that:-
 - A. My acts were ones of omission in not asking my accountants to intervene more quickly in reconciling the errors.
 - B. In dismissing Q & Co. as the day to day cashiers for my firm."
36. In relation to allegation (ii) the Respondent said that the transfer of £14,500 in the W Trust was yet another error by Q & Co. in failing to credit the account with the monies which had been paid in.
37. In relation to allegation (iii) the Respondent wrote:-

"This was an account where I was co-executor working in progress on the particular case at the time of the intervention equalled or was more than the transfer of costs. Schedules of the costs were sent to the co-executor for the authority to transfer and it is accepted that these were done without specific authority, although it does appear that the case (being concluded by third party solicitors), the bill of costs may well have been justified."
38. In relation to allegation (iv) the Respondent wrote

"At the time of Mr Carruthers' inspection, I employed an assistant solicitor, Mr P who was dealing with the conveyancing transactions. It is quite clear that he had opened one account and used it for the same client which was contrary to the Rules. It should have been a matter that I ought to have spotted before authorising any client account payments but failed to do so."
39. In relation to allegation (v) the Respondent wrote as follows:-

"This is denied.

In January 2001 Dr HG (a solicitor) joined New England Solicitors' Chambers. I felt that this would have an advancement of the Chambers on the basis that he had medical knowledge and therefore, he could advance his own personal injury practice including clinical negligence.

In order to assist Dr HG in building his own practice, I gave him various files of my own to work on on personal injury matters. In this way, he would then be able to obtain a positive cash flow to defray the expenses which he would incur in being a member of the Chambers and to build up his own practice so that he would be financially independent.

My workload was heavy and therefore, from my own point of view, it released me to devote more time to work on the case I had at the time and to balance the work between two members of the Chambers.

At Dr HG's direction, such costs as were recovered on the cases were paid to his Service Company DHLs.

Since this was a service company under his control, it was not an introducer of business but purely a vehicle through which Dr HG would be paid his proper earned fees. Subsequently, Dr HG opened his own office and client account once he was financially independent."

40. In relation to Allegation (vi) the Respondent had written

"As a result of the apparent shortfall shown by the Accountant's Report, I deposited £45,000 into client account allocated to a suspense account from which payments were made by Q & Co. into Clients' Ledgers, which was apparently overdrawn.

The errors on these client accounts were purely due to mispostings by Q & Co. I was aware of my obligation that each client's ledger should be in credit and in order to avoid any breach of Solicitors' Accounts Rule, the payment was made into an Expense Account and then allocated into separate Clients' Ledgers.

Between the conclusion of Mr Carruthers' inspection and the date of the intervention, I deposited to the client account a further £39,000 in the event that there had been any discrepancy on the client balance and in the event that duplicate transfers had been made by Q & Co. and me in error.

Whilst the current reconciliation shows a discrepancy of £4,963.64 as at the date of the intervention, it appears that there may have been an error on the initial allocation of clients' funds when Q & Co. commenced work in 1998 and that they commenced client account with a balance that could not have been reconciled with the client ledgers which they took over from reconciled balances audited by B D O Stoy Hayward. Therefore, the accountancy exercise will continue back to the commencement of their work in 1998 in order to see if there were errors which have compounded themselves since the initial client balance was taken over from the records of B D O Stoy Hayward.

Verification of this will be achieved by my present accountants, Messrs Baker Tilly and will be the subject of a separate report to be sent to the Tribunal"

41. The Respondent made the following further submissions in his statement

“I am making this statement to the allegations. I readily accepted at the intervention that the errors were such and my health was such that I felt that I could no longer act as a solicitor since the pressures of practice were such that I was unable to keep control of the administration and day to day solicitor advocacy work.

I have accepted that the intervention was justified. However, in view of the extensive accountancy exercise which has had to be completed and the fact that Mr Battersby knew that this was underway in August 2001, I consider that the accountancy exercise would have exonerated me ultimately in relation to any deficiencies on client accounts and the reflection of client account summarised by Mr Battersby was erroneous. However, my health is such that I could not have considered continuing in practice in any event and a disposal of the practice would have been inevitable after October 2001 had the intervention not taken place.

I therefore requested that my name be removed from the Roll of Solicitors forthwith and will accept a Ruling of the Tribunal that my name be formally struck off. It will not be my intention to seek any form of restoration.

I would therefore ask the Tribunal to take this statement in mitigation to read alongside it the psychiatric report.

As a result of my financial situation, I would invite the Tribunal to make no order as to costs, any imposition of costs will result in my IVA being cancelled and a formal bankruptcy order being made which I feel does not fit the justice of this case.

As a result of the errors by Q & Co. being found and on the advice of my accountants coupled with independent solicitors, a claim will be made for negligence against that firm in any event and whilst they may plead some contributory negligence in that the errors were not checked immediately by myself, I am advised that their standard of work fell far short of that required by the Solicitors' Accounts Rules and therefore, my action has a reasonable prospect of success.”

The Findings of the Tribunal

42. The Tribunal found allegations (i) to (iv) to have been substantiated indeed they were not contested.
43. In relation to allegation (v) the Tribunal accepted the explanation put forward by the Respondent that the payment he had made had in fact been paid to HG's service company at HG's direction and that HG had done the legal work in question. It was accepted that the payments had not been made to an introducer of business and the Tribunal found the allegation not proven.
44. In relation to allegation (vi) the Tribunal accepted that the Respondent had been attempting to avoid breaches of the Solicitors' Accounts Rules following the error by Q & Co. The fact that the situation was not clear was a matter of criticism in relation to the admitted matters referred to in allegations (i) and (ii). The Tribunal did not consider that the separate allegation (vi) was proven.

45. The Tribunal noted that dishonesty had not been alleged against the Respondent and the Tribunal had not found dishonesty. The Tribunal considered that the Respondent was more chaotic than dishonest. The Tribunal did not consider that the Respondent had intentionally failed to send out bills to his co-executor in the matter of the estate of WB.
46. The Tribunal noted that there had been one previous appearance by the Respondent before the Tribunal on 23rd November 2000 when the following allegations had been found proven against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-
- (i) that he had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;
 - (ii) that contrary to Rule 8 of the Solicitors Accounts Rules 1991, he drew money out of client account other than as permitted by Rule 7 of the said Rules;
 - (iii) that he failed to disclose material information to his clients;
 - (iv) (withdrawn)
 - (v) that he did employ as a clerk a person in respect of whom an Order had been made under Section 43(2) of the Solicitors Act 1974 without the permission of the Law Society.
47. On 23rd November 2000 the Tribunal appreciated that it could be difficult for a solicitor who was mainly a Solicitor Advocate to attend to matters of administration but the Tribunal took the view that those solicitors who ignore their accounting obligations do so at their peril.

The conveyancing matters in which incomplete information had been given to the lender had the hallmark of mortgage fraud and the Respondent as the solicitor responsible for the work of unadmitted staff should have ensured that all information was passed on to the lender client. The Tribunal accepted that in these particular cases there had been no mortgage fraud.

The applicant had not alleged dishonesty against the Respondent and the Tribunal had not made a finding of dishonesty. The Tribunal considered that the appropriate penalty was a fine. The Tribunal ordered that the Respondent pay a fine of £3000 in respect of allegations (i) to (iii), made no order in respect of allegation (v) and ordered that the Respondent pay costs.

48. At the hearing on 25th June 2002 the Tribunal noted the difficulties the Respondent had experienced with Q & Co. It was nevertheless, in the interests of the public, essential that solicitors kept their accounts in good order and the Respondent's accounts had reached a state which could only be described as chaotic. Having appeared before the Tribunal in November 2000 the Respondent had been warned of the need to fulfil his accounting obligations. No dishonesty had been found against the Respondent but in the view of the Tribunal he should not currently be permitted to practise. Indeed the Tribunal noted that the Respondent was still under psychiatric

care. The Tribunal considered that the appropriate penalty was an indefinite suspension from practice. In the event of that suspension being terminated by the Tribunal at some future date, the Tribunal recommended to the Law Society that the Respondent's Practising Certificate be subject to conditions allowing him only to work in approved employment.

49. The Tribunal therefore ordered that the Respondent Graham John Hewitt of Yaxley, Peterborough, Cambridgeshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 25th day of June 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,926.13p.

DATED this 12th day of September 2002

on behalf of the Tribunal

J C Chesterton
Chairman