

IN THE MATTER OF JUDITH MARY WINSHIP, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. W M Hartley (in the chair)
Mrs. E Stanley
Mr. D Gilbertson

Date of Hearing: 24th September 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 Geoffrey Williams solicitor of 2A Churchill Way, Cardiff, CF1 2DW on 4th March 2002 that Judith Mary Winship of Sunderland, Tyne & Wear (now of Ayton, Washington, Tyne & Wear) might be required to answer the allegations contained in the statement which accompanied the application and that such orders might be made as the Tribunal should think right.

The allegation against the Respondent was that she had practised as a solicitor whilst in breach of the Solicitors' Indemnity Insurance Rules 2000 contrary to Section 37 of the Solicitors Act 1974.

By a Supplementary Statement of Geoffrey Williams dated 17th July 2002 it was further alleged against the Respondent that she had been guilty of conduct unbecoming a solicitor in each of the following respects namely:-

- (a) that she had failed to maintain properly written up books of account contrary to Rule 32 Solicitors Accounts Rules 1998;
- (b) that she had drawn monies out of a client account otherwise than as permitted by Rule 22 Solicitors Accounts Rules 1998;
- (c) that she had behaved improperly in a conflict of interest situation.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2002 when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 2DW 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 contained in a letter dated 17th September 2002 sent to the Tribunal by Messrs Lewis & Co Solicitors on behalf of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Judith Mary Winship of Ayton, Washington, Tyne and Wear solicitor, 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 £6,036.49.

The facts are set out in paragraphs 1 to 60 hereunder:-

1. The Respondent born in 1967 was admitted a solicitor in 1994 and her name remained on the Roll of Solicitors.
2. At all material times the Respondent had practised as a solicitor on her own account under the style of Judith Winship, Solicitors at 226 Chester Road, Sunderland, Tyne & Wear SR4 7HR.
3. The Respondent had not practised as a solicitor since the intervention into her practice referred to in paragraphs 18 below.
4. The Respondent set up in practice on her own account on or about 3rd July 2000. With regard to her arrangements for Professional Indemnity Insurance the Respondent sought cover within the Law Society Assigned Risks Pool ("ARP").
5. On 29th August 2000 the Respondent submitted an application to the ARP for the indemnity year commencing 1st September 2000. The Respondent wished to pay her premium by twelve equal instalments.
6. In order to effect such an arrangement a Finance Company was engaged by ARP and on 27th December 2000 a Debit Note and a Finance Agreement Form were sent to the Respondent together with a request for payment of £2,296.90 being the premiums for the first five months of cover.
7. Further such documents were sent to the Respondent on 22nd February 2001.
8. Despite reminders no further progress was made. Accordingly the OSS wrote to the Respondent on 3rd April and 3rd May 2001. A copy of the Respondent's reply dated 9th May 2001 was before the Tribunal.
9. ARP instructed Solicitors to write to the Respondent in May 2001 with a view to securing payment of the premium.
10. On 10th May 2001 the Respondent wrote to ARP stating that the credit agreement had been submitted "some time ago". However the Finance Company only received the form on 15th May 2001.

11. On 9th July 2001 the Respondent purported to pay the premium by a client account cheque. This was returned to her.
12. ARP's Solicitors again wrote to the Respondent on 9th November 2001. The Respondent replied on 8th November 2001 enclosing a cheque for £500 by way of part-payment.
13. The cheque was wrongly made out and returned. No further cheque was received from the Respondent.
14. On 14th December 2001 a Default Judgment was obtained against the Respondent. Shortly prior to that date the sum of £459.38 had been collected by the Finance Company by way of a direct debit payment. In January 2002 bailiffs were instructed to enforce the Judgement.
15. In April 2002 the Judgment Creditor received from the Respondent the sum of £5,972.87 which amount included the costs of the solicitors for the Judgement Creditor.
16. The Respondent practised as a Solicitor throughout the period of default as set out above being the entire indemnity year commencing 1st September 2000. The Respondent arranged insurance cover for the indemnity year commencing 1st September 2001 but not through the ARP.
17. Upon notice duly given to the Respondent an inspection of her books of account was carried out by the Forensic Investigation Unit of the OSS. A copy of the resulting report dated 31st August 2001 was before the Tribunal.
18. On 24th January 2002 an Adjudication Panel of the OSS considered the report and resolved to intervene into the practice of the Respondent.
19. The report identified the following matters.
20. The books of accounts were not in compliance with the Solicitors Accounts Rules as prior to the inspection no reconciliation of client liabilities with cash held had been prepared since the practice had been established.
21. The Investigation Officer identified a cash shortage on client account of £1,809.05 as at 6th July 2001.
22. The cash shortage arose principally from debit balances caused by over payments.
23. The Respondent agreed the shortage and said that she would rectify the shortage which had resulted from the overpayments by recovery from clients or third parties to whom the overpayments had been made.
24. The Respondent said that any un-recovered overpayment together with the book difference would be rectified by utilising costs due to herself which she believed had not been transferred from client bank account. The envisaged rectification would take approximately 14 days.

25. The overpayments had arisen as set out below.
26. During the period from 30th December, 2000 to 6th July, 2001 nineteen overpayments varying from £5.00 to £880.00 and totalling £1,670.30 had been made in respect of nine client matters.
27. The Respondent admitted that she had made overpayments in respect of these clients and she attributed the payments to mistakes. The two largest were exemplified in the report as follows.

Mrs C - £880.00

28. The Respondent acted for Mrs C in the purchase of a property at a price of £145,000.00.
29. On 5th March, 2001 when the balance on Mrs C's ledger card was only £190.00, the Respondent paid Stamp Duty of £1,530.00 on Mrs C's behalf which resulted in a debit balance of £1,340.00. The debit balance was subsequently reduced on 22nd March, 2001 to £640.00 when an amount of £700.00 was received from the client.
30. The shortage was increased on 10th April, 2001 when the Respondent paid £240.00 to H. M. Land Registry on Mrs C's behalf. The resultant debit balance of £880.00 remained as at the inspection date.
31. The Respondent said that she had not known that the payment of £1,530.00 Stamp Duty would cause the account to go overdrawn because her ledgers were not up to date. She said, however, that she had been aware that the account was already overdrawn when she made the further payment of £240.00 on 10th April, 2001.
32. The Investigation Officer asked the Respondent why, in such circumstances, she had paid the Land Registry fees. The Respondent replied "I don't know why I paid it".
33. A shortage had existed on client account in respect of this matter for in excess of four months.
34. The Respondent said that she was "chasing" the client for the money and was hopeful of recovering it soon.

Mr H – £392.73

35. The Respondent acted for Mr H in the sale of a property at a price of £32,000.00.
36. On 6th June, 2001, when the balance on Mr H's ledger card was only £31,012.27, the Respondent paid £31,405.00 to her client which resulted in a debit balance of £392.73.
37. The Respondent said that she had not realised, when making the above payment, that she had insufficient funds on behalf of Mr H. The Investigation Officer noted that the Respondent had insufficient funds at 6th June, 2001 because she had previously paid estate agents fees, in the sum of £495.00, twice during May, 2001.

38. The Respondent accepted that this shortage existed and she said that she was trying to recover the overpayment from the estate agents.
39. The report identified shortages rectified prior to the inspection resulting from overpayments and misuse of client funds as follows.
40. The Respondent had discussed the prospect of acting on behalf of Mr T and his security company in respect of commercial matters.
41. On 28th February, 2001, when no money was held on his behalf, the Respondent paid Mr T £2,200.00 in cash from client bank account thereby creating a debit balance of £2,200.00 on the relevant ledger account.
42. On 6th March, 2001 when the balance on Mr T's ledger was still £2,200.00 debit the Respondent paid him a further £1,950.00 in cash from client bank account, thereby increasing the debit balance to £4,150.00.
43. On 17th April, 2001, an amount of £4,150.00 was lodged in client bank account and credited to Mr T's ledger, thereby eliminating the debit balance.
44. On 10th May, 2001, an amount of £4,000.00 was paid from client bank account and debited to Mr T's ledger, thereby creating a debit balance of a like amount.
45. On 15th May, 2001, an amount of £4,000.00 was lodged in client bank account and credited to Mr T's ledger, thereby eliminating the debit balance.
46. The Respondent said that she had paid £2,200.00 cash to Mr T on 28th February, 2001 on the understanding that he would give her a like amount of cash later that day. She said that he had not told her what he wanted this cash for. She added that he had not given her any cash later that day but had given her a cheque in the sum of £2,200.00 on 5th March, 2001. This cheque however, had subsequently not been honoured.
47. The Respondent said that she rectified the balance of £4,150.00 on 17th April, 2001 by borrowing £150.00 from her mother and £4,000.00 from a friend, a Mr C and paying these into client bank account.
48. On 10th May, 2001, however, Mr C had required payment of his loan and the Respondent paid an amount of £4,000.00 from client bank account. This payment was debited to Mr T's ledger account thereby creating the debit balance of £4,000.00 noted above.
49. The Respondent said that the resultant debit balance of £4,000.00 was rectified when she lodged an amount of £4,000.00 in client bank account on 15th May, 2001 which she had borrowed from her mother.
50. The Investigation Officer asked the Respondent why, on two occasions (28th February 2001, £2,200.00 and 6th March 2001, £1,950.00) she had taken cash from client account and paid it to Mr T when she was not holding any funds on his behalf.
51. The Respondent replied that she really trusted Mr T and that at the time of the second payment she was unaware his cheque for £2,200.00 had not been honoured by his bank.

52. The Investigation Officer asked the Respondent if she had advised Mr C to obtain independent advice before lending her the amount of £4,000.00. The Respondent replied “No”.
53. The Investigation Officer noted that the client account paying in book recorded that the amount of £4,000.00 was received from “L Foundation”.
54. The Respondent said that The L Foundation was a charity and that Mr C was a trustee of the charity.
55. The Investigation Officer asked the Respondent if she thought Mr C should have lent the charity’s funds or if she should have accepted the loan. The Respondent replied “No” to both these questions.
56. The Investigation Officer asked the Respondent why, in view of her answers above, she had accepted the loan. The Respondent replied “I needed the money”.
57. The Investigation Officer asked the Respondent if she accepted that, when she repaid the £4,000.00 on 10th May, 2001 she had used client funds to repay a personal loan.
58. The Respondent replied “Yes” but she went on to say that at the time she had not realised it would be considered a personal loan.
59. The report further noted that the Investigation Officer had asked the Respondent why she had attempted to pay her outstanding premium with a cheque drawn on her client bank account. The Respondent had replied that she had “picked up” the wrong cheque book.
60. On 8th October 2001 the OSS wrote to the Respondent seeking her observations upon the report. The Respondent replied by a letter dated 15th October 2001 a copy of which was before the Tribunal.

The Submissions of the Applicant

61. The Respondent had admitted the allegations.
62. The Respondent’s letter to the OSS of 9th May 2001 made clear that she knew that that she had to pay the outstanding insurance premiums.
63. The Applicant had not alleged conduct unbecoming in relation to the insurance premiums. It was accepted that the Respondent had had real difficulties. Nevertheless if a solicitor wished to practice he or she had to have insurance cover and had to pay for it.
64. The Respondent had been in breach of Rule 16 of the Solicitors Indemnity Insurance Rules 2000 which said that:-
 - “any firm in the assigned risks pool must pay to the assigned risks pool manager the assigned risks pool premium within 30 days of such premium being notified to it by the assigned risks pool manager”.

65. The Respondent had been in breach of the Rule throughout the practising year. If solicitors did not pay the premiums this increased the burden on those who did.
66. In relation to the allegations contained in the Applicant's Supplementary Statement the breach of Rule 22 was a most serious allegation.
67. The Applicant did not allege dishonesty but the Respondent had been guilty of conduct unbecoming a solicitor of the most serious kind.
68. The Respondent had been naïve and too trusting to say the least but she had also been guilty of consciously and improperly making withdrawals from client account.
69. The most serious conduct had been in relation to Mr T, a potential client, where the Respondent had knowingly used other client's funds for his purposes.
70. It was submitted that these were conscious, wilful and deliberate breaches.
71. The Applicant did not doubt that the Respondent had trusted Mr T to pay her back but as a solicitor she would know that she was not entitled to take the money in the first instance.
72. In relation to allegation (c) although Mr C was not a client he was a trustee of a charity. The Respondent had known this and had known what the charity was. This was an unusual allegation to plead when it did not involve a client but the Respondent knew that she was in financial difficulties and given all of the circumstances it was submitted that given that the funds came from a charity there should have been independent advice.
73. In relation to the client account cheque sent in payment of the insurance premiums the Applicant was not able to disprove that the Respondent had picked up the wrong cheque book.
74. This was a very sad case for relatively young solicitor undergoing personal and professional difficulties. The Tribunal however was asked to assess how she had behaved in the face of those difficulties. She had taken risks with client funds and had borrowed from a charity when in financial difficulties.
75. The Respondent had let her financial difficulties cloud her professional judgment. She had not exhibited the characteristics of reliability and trustworthiness expected of solicitors.
76. The Applicant sought his costs of the matter although he had no doubt that the Law Society would bear in mind the Respondent's present circumstances.

The Submissions on behalf of the Respondent

77. By a letter dated 17th September 2002 to the Tribunal, Messrs Lewis & Co Solicitors of 80a Front Street, Prudhoe, Northumberland, NE42 5PU had admitted the allegations on behalf of the Respondent. Messrs Lewis & Co had requested that the letter not be read out at the Tribunal.

78. The letter dealt with the Respondent's circumstances at the time of the events to which the allegations related and currently.
79. The letter also gave information regarding the Respondent's health and financial situation.
80. The letter also enclosed references in support of the Respondent.
81. The Tribunal was asked to consider a penalty other than striking the Respondent off the Roll.

The Findings of the Tribunal

82. The Tribunal found the allegations to have been substantiated indeed they were not contested.
83. The Tribunal noted that dishonesty had not been alleged against the Respondent and the Tribunal had not found dishonesty. Nevertheless the Tribunal considered that the Respondent had been guilty of conduct unbecoming a solicitor of the most serious kind.
84. In relation to the Insurance Indemnity Premium while it was accepted that the Respondent had been in genuine financial difficulties she had continued to practise for a full indemnity year while knowingly in breach of the Rules.
85. In relation to the matter of Mr T the Tribunal accepted that the Respondent had trusted Mr T and had been confident that he would repay the money but the money she had paid to him had been that of her clients. She had consciously and improperly withdrawn money from her client account and paid it to a third party.
86. Client account was sacrosanct and the public confidence that all solicitors would regard it as such must be maintained. The Tribunal had considered carefully the mitigation submitted by the Respondent's solicitors, the references in her support and the medical evidence. The Tribunal however, mindful of its duty to protect the public and to maintain public confidence in the profession, considered that the appropriate penalty was the ultimate sanction.
87. The Tribunal ordered that the Respondent Judith Mary Winship of Ayton, Washington, Tyne and Wear, solicitor 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 £6,036.49.

DATED this 4th day of November 2002

on behalf of the Tribunal

W M Hartley
Chairman