

IN THE MATTER OF ALASTAIR GOURLAY HOWARD LAPSLEY, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. R J C Potter (in the chair)  
Mr. A G Ground  
Lady Maxwell-Hyslop

Date of Hearing: 7th November 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 (the "OSS") by Jonathan Richard Goodwin, solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH on the 15<sup>th</sup> March 2002 that Alastair Gourlay Howard Lapsley of Long Compton, Warwickshire, solicitor, might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:

- (i) That he had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 and/or the equivalent in the Solicitors Accounts Rules 1998;
- (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 and/or in the alternative the equivalent in the Solicitors Accounts Rules 1998;

- (iii) That he utilised clients' funds for his own purpose;
- (iv) That he had misappropriated clients' funds which for the avoidance of doubt amounted to an allegation of dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 7<sup>th</sup> November 2002 when Jonathan Richard Goodwin, solicitor and partner in the firm of JST Mackintosh, Colonial Chambers, Temple Street, Liverpool, L2 5RH appeared as the Applicant and the Respondent was represented by Mr Aspinall of Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent of allegations (i) to (iii) but his denial of allegation (iv). The Tribunal heard the oral evidence of character witnesses speaking in support of the Respondent, Mr M J Limb OBE and His Honour Judge P J Crawford.

At the conclusion of the hearing the Tribunal ordered that the Respondent Alastair Gourlay Howard Lapsley of Long Compton, Warwickshire, solicitor, be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £9,000.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent, born in 1940, was admitted as a solicitor in 1964.
2. At all material times the Respondent carried on practice on his own account under the style of Farrant & Sinden from offices at 8 Horsefair, Chipping Norton, Oxfordshire, OX7 5AH. On the 22<sup>nd</sup> November 2001 the Adjudication Panel of the OSS resolved to intervene into the Respondent's practice.
3. Following notice duly given, the Forensic Investigation Unit (FIU) of the OSS carried out an inspection of the Respondent's books of account commencing on the 7<sup>th</sup> November 2001. A copy of the FIU Report dated 15<sup>th</sup> November 2001 was before the Tribunal.
4. The FIU Report revealed that the Respondent conducted a general practice assisted by a staff of five including one assistant solicitor and an office manager, Mr T.
5. The firm's books of account were not in compliance with the Solicitors Accounts Rules.
6. As at 30<sup>th</sup> September 2001 a client account shortage of £87,794.85 existed on client bank account. Of this shortage an amount of £87,229.08 had been caused by a number of client to office bank account transfers which had not been allocated to any account in the clients' ledger. The balance of the client account shortage, £565.77, represented a book difference.
7. The Respondent agreed the existence of a client account shortage of about £68,000 as at 30<sup>th</sup> April 2001. He said that he did not know about the existence of the client

account shortage until he was informed about it by Mr T on 17<sup>th</sup> October 2001. The Respondent stated that he imagined that the shortage would increase month by month and was caused as the result of “not enough fee income”. The firm had always experienced cash flow problems.

8. The cash shortage was not replaced during the inspection. The Respondent had made arrangements with Mr T to borrow £68,000.
9. Of the cash shortage, an amount of £87,229.08 arose as a result of seventy-seven separate transfers from client to office bank account, varying in amount between £581.25 and £7,637.50 and totalling £248,234.16 having been made between 1<sup>st</sup> September 2000 and 26<sup>th</sup> September 2001. These transfers had not been allocated to any account in the clients’ ledger.
10. Between 1<sup>st</sup> September 2000 and 26<sup>th</sup> September 2001 the firm recorded costs due to be transferred from client to office bank account of £161,005.08. That amount had been deducted from the unallocated transfers to arrive at the client account shortage (£248,234.16 - £161,005.08 = £87,229.08). Full details of the transfers were set out in the FIU Report. Round sum transfers had been made, to include four sums of £5,000 in September, October and November 2000 and April 2001 and one of £6,000 in March 2001.
11. When interviewed by the FIU officer the Respondent said that he did not know about the client account shortage until the matter had been brought to his attention by Mr T on 17<sup>th</sup> October 2001. The Respondent said that he carried out checks and reviews of the accounts but he had not noticed that some £87,000 more than the customary fee income of the firm had been transferred during the year prior to the inspection. Mr T said that a “fair percentage” of the transfers were made as a result of information received from the bank. Mr T said that someone from the bank would ring him up in the morning and tell him how much needed to be credited to the office bank account to prevent it from exceeding the overdraft limit of £5,000. Mr T would then inform the Respondent about the amount required. The Respondent would then instruct him to find it. Mr T would then prepare a letter of instruction to the bank to make a client to office account transfer which the Respondent would sign. The Respondent said he had noticed some round sum transfers being made but he had not queried them.

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

12. The Respondent accepted that he had been guilty of breaches of the Solicitors Accounts Rules and, as a result of those breaches and the improper transfers, he had utilised clients’ monies although it was his position that he had done so without intending to do so.
13. The Respondent was a sole practitioner and was in charge of his firm and was responsible for the proper stewardship of client monies. He should at least have raised a query when the transfers made from client to office account considerably exceeded the total of transfers made in previous years, particularly when he was aware of the fact that the firm had a continuing cash flow difficulty. It was the Applicant’s position that the Respondent either knew what was going on and

condoned it or he turned a blind eye to the financial position of the firm and did not pay close attention to transfers being made by a member of his staff.

14. The conduct of the Respondent amounted to a serious type of misconduct which did serve to damage the good reputation of the solicitors' profession. It was the Applicant's position that the Respondent had not discharged his professional duties with complete integrity and probity.

### **The Submissions of the Respondent**

15. For over forty years the Respondent had participated in motor sport as a competitor and official. This activity had formed a substantial part of his life and resulted in his often being away from his practice. The Respondent held and continued to hold a number of high offices in motor sports and at the date of the hearing the Respondent was permanent steward for the FIA International GT Championship.
16. The Respondent's cashier, Mr T, had first assisted his previous cashier and since the early seventies Mr T had been the cashier in day to day charge of the accounts under the Respondent's overall control until The Law Society's intervention. Mr T's accounting tasks included keeping the ledgers and books up to date, banking and drawing monies, transferring monies between accounts, drawing and delivering clients' bills, the issuing of cheques to pay the firm's bills, and the placing of clients' money on and its removal from deposit at the firm's bank and building societies.
17. For over thirty-five years the firm's accounts had been run properly and without complaint (save for the 1987 matter). For approaching thirty of those years the day to day running had been in the hands of Mr T. The one earlier matter of complaint had occurred over thirteen years before 2000.
18. Accountants were employed to carry out annual audits of the firm's accounts and these audits did not give rise to any concern until the events in 2001 that led to the intervention, save for the matter in 1987 when the Respondent admitted improperly using clients' monies and was fined £500. Then there was no deficit and no suggestion of dishonesty.
19. Mr T had demonstrated competence over many years; he had extensive experience in dealing with the firm's accounts and there had been no cause for concern about the audited accounts (save for the matter in 1987). The Respondent was content to let the day to day charge of the firm's accounts be in the hands of Mr T subject to his own overall control until 17<sup>th</sup> October 2001. The Respondent had no reason to think other than that Mr T was complying with the Solicitors Accounts Rules regarding the transfer of monies from client account to office account, that the transfers of such monies were for proper purposes, that proper accounting records of the transfers were being kept and that Mr T was conducting the necessary balancing exercises.
20. The Respondent had responsibility for the firm's accounts but his experience of Mr T was such that he was confident to delegate the day to day accounting functions to him in the belief that the accounts were being properly attended to. Each week the Respondent looked at the bank statements to check the balances rather than the details

of the transactions conducted and each month he checked the bills delivered book to ensure that income was being generated and that the bills were being paid.

21. The Respondent was often away from the office for days at a time in connection with his motor sport activities or staying at his cottage in Devon. He always ensured that there were available for the use of Mr T blank transfer authorisations signed by him and blank cheques signed by him in order that Mr T might properly carry out the firm's accounting functions in the Respondent's absence from the office.
22. The Respondent's firm was a small country practice and over many years liquidity had been a problem. This problem had been a normal part of daily life. The firm enjoyed adequate banking facilities with the result that liquidity never gave the Respondent concern that the firm might be failing financially. The liquidity of the firm never caused the Respondent to scrutinise the details of the transactions shown in the bank statements and the balances in those statements never indicated a serious liquidity problem of a kind not previously experienced. The firm had a formal overdraft limit of £5,000 but in practice the firm's bankers permitted overdraft facilities up to £10,000. The Respondent was not aware of any mandates or cheques not being met.
23. Naturally when the bank expressed concern about the level of the firm's overdraft efforts would be made to find monies that could properly be transferred from the firm's client account. The Respondent had no reason to suppose that the cash flow problems had been any more pressing than those to which he was accustomed and he was not therefore alerted to the fact that improper transfers were being made from client account.
24. The day to day monitoring of the liquidity of the firm was delegated to Mr T. The Respondent was confident that if a liquidity problem of an unusual nature had arisen Mr T immediately would inform him.
25. During 2000 and 2001 at no time was the Respondent aware that his firm had a liquidity problem which was being dealt with by improper transfers from client account to office account. Such transfers had been effected by Mr T and he kept the Respondent completely in the dark about the matter until the events of 17<sup>th</sup> October 2001.
26. It had become apparent that during the period September 2000 to October 2001 Mr T had effected seventy seven transfers of monies from client account to office account involving an overall sum of £248,234.16 of which £87,794.85 was improperly drawn from the client account and that no proper records were kept in relation to the transfers made from client account. Mr T utilised blank transfer authorisations signed by the Respondent to effect both proper and improper transfers of clients' funds to office account. The improper transfers had been made without the Respondent's knowledge and in all probability when the Respondent was out of the office.
27. It had become apparent that in the late summer of 2000 the expenditure of the firm began to outstrip the income so that it was no longer financially viable unless proper corrective measures were taken. Mr T had not drawn this to the Respondent's attention.

28. By 2000 Mr T had been in his employment with the firm for over thirty five years and the prospect of his obtaining other employment was slim. He was due to retire in about two years. In addition he had severe personal problems. The Respondent had come to believe that Mr T realised that the firm was becoming financially non-viable and he resorted to making improper transfers from client account to office account without the Respondent's knowledge in the hope that all would be well by the time he came to retire.
29. It was inevitable that what had been going on would be discovered when the firm's annual audit was carried out. There had been no question that the monies improperly transferred had been used for any purpose other than the maintenance of the firm,
30. The Respondent had no desire to blame Mr T for what had occurred. The Respondent fully recognised that he had to accept responsibility for the accounting failures and his admissions reflected his acceptance of this responsibility.
31. The Respondent's personal financial position was such that he could not replace the shortage on client account. Mr T had agreed to raise funds secured by a mortgage on his home. This was not taken up as The Law Society intervened into the practice.
32. The Respondent in admitting allegations (i), (ii) and (iii) recognised his responsibility. He denied allegation (iv); he had not been dishonest but had been deceived by a trusted employee. The Respondent had acted honestly in his profession as a solicitor.
33. Much of the Respondent's extensive work in motor sport involved acting in a judicial or quasi judicial capacity in circumstances of great responsibility and it would be inconceivable for an individual to act dishonestly when discharging such tasks or to achieve the offices he had held if of a dishonest disposition. The Tribunal was invited to give due weight to the evidence of the witnesses who spoke as to his character and honesty.
34. The Respondent recognised the gravity of the allegations. At his age and his likely inability to get abreast of contemporary accounting methods involving the use of computers he did not consider that it would be appropriate again to practise as a solicitor and he had no intention of doing so.
35. The Respondent had lost the profession of solicitor which he practised with honesty, dignity, pride and purpose for over 37 years and the loss of his profession in the attendant circumstances had been a very great blow to him.
36. The Respondent had lost his well respected firm: he had spent the bulk of his professional life working for that firm.
37. The intervention meant that the Respondent could not sell the firm and its goodwill upon his retirement, representing a financial loss to him: he would not be paid for the work-in-progress at the time of the intervention. The Respondent had no income and no realisable assets.

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

38. The Tribunal found allegations (i) to (iii) to have been substantiated, indeed they were not contested. The Tribunal was not satisfied to the relevant standard of proof that the Respondent had been guilty of dishonesty and they found allegation (iv) not to have been substantiated.
39. On the 29<sup>th</sup> September 1987 the Tribunal found the following allegations to have been substantiated against the Respondent:-
- (a) failed to comply with the Solicitors Accounts Rules 1975 in that he:
    - (i) notwithstanding the provisions of Rule 8 of the said Rules drew out of a client account money other than that permitted by Rule 7 of the said Rules;
    - (ii) notwithstanding the provisions of Rule 11 of the said Rules failed to keep properly written up such books and documents of account as were required by such Rule;
  - (b) been guilty of conduct unbefitting a solicitor in that he utilised money held and received by him on behalf of a certain client or certain clients for the purposes of a person other than such client or clients.
40. Having found those allegations to have been substantiated, the Tribunal said:-

“The Tribunal were concerned that the respondent’s financial control of his firm left much to be desired. The Tribunal appreciated the fact that the respondent attended before them and told them fairly and frankly what had happened. The Tribunal find the allegations to have been substantiated, indeed they were not contested. The Tribunal order that the respondent Alastair Gourlay Howard Lapsley of No. 8 Horse Fare, Chipping Norton, Oxfordshire do pay a penalty of £500.00 such penalty to be forfeit to Her Majesty the Queen and that he do pay the costs of and incidental to this application and enquiry to include the costs of The Law Society’s Investigation Accountant, such costs to be taxed by one of the Taxing Masters of the Supreme Court”.

#### **The Tribunal’s reasons**

41. The Tribunal was deeply concerned by what had happened in the Respondent’s practice. The Respondent was an experienced solicitor and as the sole practitioner had full responsibility for compliance with the Solicitors Accounts Rules and the handling of clients’ money.
42. It was conceded by the Respondent that the three allegations which he admitted were of the greatest seriousness and involved the mishandling of a substantial sum of clients’ money. The improper transfers of clients’ money had been going on over a period of time.

43. In all of the circumstances, the Tribunal did not find that the Respondent had behaved dishonestly but they did find that he acted in a way that amounted to a gross dereliction of duty falling very far short of the standards required of a member of the solicitors' profession. In particular, he had not exercised a proper stewardship over clients' monies.
44. The Respondent explained that he was away from the office on a number of occasions. It had been his practice whilst away to leave blank cheques and bank transfer forms signed for the use of members of his staff. It had to be said that in doing so he had been guilty of acts of extraordinary recklessness.
45. The Respondent had already received a warning in 1987 when the Tribunal considered that his then financial control of his firm left much to be desired.
46. The Tribunal was deeply concerned by the Respondent's attitude to the handling of clients' money and the financial control of his firm and considered that his recklessness in that regard operated at such serious level that in the interests of the public and the good reputation of the solicitors' profession he should not be permitted to practise as a solicitor.
47. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors, despite its finding that dishonesty had not been established against the Respondent. The Tribunal considered that the honesty question was properly aired before the Tribunal and in all the circumstances it was right that the Respondent should bear the whole of the costs of and incidental to the application and enquiry and the Tribunal ordered that such costs should be paid by the Respondent in the agreed fixed sum of £9,000.

DATED 9<sup>th</sup> day of December 2002  
on behalf of the Tribunal

R J C Potter  
Chairman