

IN THE MATTER OF ROBERT WILLIAM GARSIDE, ANITA JANE GARSIDE and
PAUL VERNEY ROBERTSHAW, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mr D J Leverton
Mrs S Gordon

Date of Hearing: 27th March 2003

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 Marriott solicitor and partner in the firm of Gorvin Smith Fort (subsequently Gorvins) of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 18th April 2002 that Robert William Garside of Hawkstone House, Valley Road, Hebden Bridge, HX7 7BL, Anita Jane Garside of Valley Road, Hebden Bridge, and Paul Verney Robertshaw of Newlands Drive, Halifax, solicitors 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.

1. The allegations against Robert William Garside ("the First Respondent") were contained in the Applicant's statement pursuant to Rule 4(2) of the Solicitors (Disciplinary Proceedings) Rules 1994 dated 18th April 2002; further allegations were contained against Robert William Garside in a Supplementary Statement made by the Applicant dated 16th October 2002; further allegations were made against Mr Robertshaw in a supplementary statement made by the Applicant dated 16th October 2002 and a further allegation was made against Mr Robertshaw in a Supplementary Statement dated 15th January 2003. The Supplementary Statements were made

pursuant to Rule 4(2) and 14(a) of the Solicitors (Disciplinary Proceedings) Rules 1994.

2. Following representation made on behalf of the First Respondent relating to his poor health a Chairman of the Tribunal had prior to this hearing agreed that the allegations against the First Respondent should be adjourned for 12 months (with a review at six months in case his health should improve). The Tribunal expressed the hope that The Law Society might be able to obtain from the First Respondent an undertaking (i) to notify the Tribunal of any improvement in his medical condition which could lead to his returning to practice and (ii) that he will not return to practice in any capacity before first bringing the matter to the attention of The Law Society. The Clerk to the Tribunal confirmed that position to the Applicant by letter dated 14th March 2003.
3. The allegations set out below are those made against Mrs Garside contained in the original Rule 4 Statement and those made against Mr Robertshaw contained in the original Rule 4 Statement, the Supplementary Statement relating to him dated 16th October 2002 and the Supplementary Statement containing the single further allegation against Mr Robertshaw dated 15th January 2003.
4. The allegations against Anita Jane Garside are that she has been guilty of conduct unbecoming a solicitor in that she:-
 1. employed or remunerated in connection with her practice without written permission from The Law Society the Third Respondent, a person whose Practising Certificate had been suspended by reason of him being an undischarged bankrupt contrary to Section 41 of the Solicitors Act 1974;
 2. by reason of the above compromised or impaired her integrity, her duty to act in the best interests of her clients and her good repute and that of the solicitors profession contrary to Rule 1 of the Solicitors Practice Rules 1990.
5. The allegations against the Third Respondent Paul Verney Robertshaw are that he has been guilty of conduct unbecoming a solicitor in that he:-
 1. practised uncertificated contrary to Section 1 of the Solicitors Act 1974;
 2. failed to give notice to The Law Society of a change of his place of business within 14 days or at all contrary to Section 84(1) of the Solicitors Act 1974;
 3. failed to deal promptly and substantively with correspondence from the OSS;
 4. failed to deliver to The Law Society Accountant's Reports for the year ended 31st March 2000 and 31st March 2001 within the time specified (six months) or at all contrary to Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998;
 5. by reason of the above compromised and/or impaired his integrity, his duty to act in the best interests of his clients, his good repute and that of the solicitors' profession and his proper standard of work contrary to Rule 1 of the Solicitors Practice Rules 1990.
 6. practised uncertificated contrary to Section 1 of the Solicitors Act 1974 since 6th November 2001;
 7. held monies in client account whilst uncertificated;
 8. failed to produce to the Investigation and Compliance Officer appointed by The Law Society records, papers, financial accounts and other documents and information necessary to prepare a report relating to compliance with the Solicitors Accounts Rules contrary to Rule 34 of the Rules 1998;

9. failed to keep his accounting records properly written up contrary to Rule 32 of the 1998 Rules;
10. failed to deal promptly and substantively with correspondence from the Office dated January 2002.
11. failed to deliver to The Law Society an Accountant's Report for the year ended 31st March 2002 within the time specified (six months) or at all contrary to Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998.

[The Tribunal noted that allegation 1 was duplicated at allegation 5 against Mr Robertshaw].

6. The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant. Mrs Garside and Mr Robertshaw did not appear and were not represented. Mrs Garside had written to the Tribunal a letter dated 25th March 2003 confirming that she would not be attending the hearing. She said that she was content that the matter proceed in her absence. She wished to rely on the statement she had already submitted to the Tribunal and the medical report.

7. At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal order that the Respondent Anita Jane Garside of Valley Road, Hebden Bridge, solicitor be suspended from practice as a solicitor for a period of seven days to commence on the 27th day of March 2003 and they further order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,813.51.

The Tribunal order that the Respondent Paul Verney Robertshaw of Newlands Drive, Halifax, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 27th March 2003 and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,260.93.

8. The facts are set out in paragraphs 9 to 38 hereunder: -
9. Mrs Garside was born in 1958 and was admitted as a solicitor in 1992.
10. Mr Robertshaw was born in 1954 and was admitted as a solicitor in 1978.
11. The First Respondent had practised as Thompson Garside. Subsequently the First Respondent and Mrs Garside (who are husband and wife) from about 1st July 2001 were directors of Thompson Garside Limited which traded as Thompson Garside, Solicitors, from Hawkstone House, Valley Road, Hebden Bridge, HX7 7BL.
12. Mr Robertshaw had worked as an assistant solicitor for Thompson Garside since 1st May 2000.
13. On 21st May 2001 a bankruptcy order was made against Mr Robertshaw. On 31st May the OSS wrote to him drawing his attention to the fact that his Practising Certificate was automatically suspended and that the Accountant's Report for his firm for the period ending 31st March 2000 had not been received. The OSS received no reply.

The OSS wrote a reminder on 12th June 2001 and requested Mr Robertshaw to state whether his practice had ceased or not. No written reply was received from him but a note was made of a telephone conversation with him on 14th June 2001 in which he confirmed that he was adjudicated bankrupt on 21st May 2001 and he was practising at Thompson Garside & Co. He was advised that he should cease to practise immediately and he agreed to that. He also stated that he had ceased to practise as Paul Robertshaw, solicitor on 31st May 2000 but had not notified The Law Society of this.

14. On 5th July the OSS again spoke to Mr Robertshaw and also to the First Respondent. It was apparent from the conversation that Mr Robertshaw was still practising at Thompson Garside.
15. After the telephone call the OSS wrote to Mr Robertshaw on 5th July 2001 to confirm the points made on the telephone and to seek an explanation. The letter confirmed:-
 - (i) he had been employed as an assistant solicitor by Thompson Garside since 1st May 2000;
 - (ii) he had not notified The Law Society of the closure of his firm; "Paul Robertshaw";
 - (iii) at the time of the closure of his firm all files were taken with him to Thompson Garside;
 - (iv) he still held a client account.
16. He was asked to explain why he continued to practise uncertificated and what was the current position with his closed firm. The Tribunal had before it the statement of Ms C, the manager of the Regulation Unit of the OSS. A note of the telephone conversation had been made and read back to Mr Robertshaw.
17. Mr Robertshaw replied by letter dated 20th July 2001. He disputed the context of the telephone call of 14th June 2001 and said that:-
 1. He had not been practising on his own account since 1st May 2000;
 2. All his work was done through Thompson Garside;
 3. He was not doing any work which a legal clerk would be able to do;
 4. He was told he must not practise as a solicitor or to be held out as a solicitor;
 5. At no time was he told he must not do anything at all within the office and should leave immediately;
 6. When he was so told he did;
 7. He was not employed by Thompson Garside but was simply a locum;
 8. Bills were not delivered to clients from his firm for work done after the 1st May 2000;
 9. He invoiced Thompson Garside for work done from home;
 10. Since the bankruptcy order he had not sued for costs, had not appeared in open court, signed any legal aid forms, had been involved in conveyancing work and had not supervised the work of any fee earner;
 11. His name was removed from the letterhead as soon as the need to do so came to light;
 12. His failure to deal with the outstanding Accountant's Report was an oversight.
18. In a letter to the First Respondent dated 5th July 2001 the OSS asked him to explain his conduct and that of Mrs Garside and in particular why Thompson Garside had

continued to employ Mr Robertshaw knowing that he had no Practising Certificate when they had known this fact for at least two weeks; and what work Mr Robertshaw had done for Thompson Garside whilst uncertificated.

19. The First Respondent had replied by letter dated 10th July 2001 stating that:-
 1. Mr Robertshaw was employed by Thompson Garside as a full time self-employed locum from 1st May 2000 until it ceased to trade on 30th June 2001;
 2. From 1st July 2001 the practice was incorporated trading as Thompson Garside;
 3. On 19th or 20th June 2001 Mr Robertshaw informed him that he had been made bankrupt;
 4. He had told Mr Robertshaw that he would have to cease to practise whereupon Mr Robertshaw indicated that he had discussed the matter with the OSS and although told he could not act as a solicitor he could still be employed by the firm as a paralegal;
 5. He believed Mr Robertshaw when he said this;
 6. He should have contacted the OSS or referred to the practice rules but had not because of an audit by the OSS, pressure of work, the sale of premises in Halifax and the incorporation;
 7. When the OSS informed him he should not employ Mr Robertshaw he asked him to leave;
 8. On learning of the bankruptcy he took immediate steps to remove Mr Robertshaw's name from the firm's letterhead and stationery and told accounts staff that he was not able to authorise any transfer of monies or sign cheques and told Mr Robertshaw that he was unable to administer oaths or sign any documents which might bind the firm;
 9. He had informed his co-director, Mrs Garside, of Mr Robertshaw's bankruptcy;
 10. Mr Robertshaw had received no remuneration since he had been adjudicated bankrupt. He was to have been re-employed by the limited company from 2nd July but no contract of employment had been prepared;
 - xi. Apologised for his oversight;
 - xii. He had held a Practising Certificate for 26 years, his wife had had a Practising Certificate for nine years and both had unblemished records;
 - xiii. Once he had discovered the position, Mr Robertshaw remained in the office no more than eight and a half days during which time he was not held out as a solicitor and did not receive any remuneration.
20. The First Respondent made further submissions to the OSS by letter dated 28th September 2001 on behalf of himself and Mrs Garside which repeated previous assertions and denied that Thompson Garside was in breach of the regulations concerning the employment of Mr Robertshaw whilst he was an undischarged bankrupt.
21. Following authorisation and notification given to Mr Robertshaw, an inspection of his books of account was started on 24th October 2001. The inspection was terminated and the Investigation and Compliance Officer ("the ICO") prepared a report dated 28th November 2001 which was before the Tribunal.

22. Mr Robertshaw advised the ICO that there were three accounts in which client monies were held. The details were:-

General client account as at 24 th May 2001	£4,702.76
Designated deposit account as at 12 th October 2001	£16,481.59
Designated deposit account as at 13 th July 2001	£6,099.07

23. Both designated deposit accounts related to probate matters in relation to which Mr Robertshaw said he had not transferred those matters to another solicitor but no further work had been carried out on the probate matters.
24. The ICO was given a computer spreadsheet of a cash book by Mr Robertshaw on 13th November 2001 which showed that the cash book started on 1st April 1999 and ended on 13th March 2000. The bank statements made available indicated that transactions had continued until at least May 2001.
25. The inspection started on 24th October 2001 when the ICO attended at 7 Newlands Drive, Halifax which was Mr Robertshaw's address registered with The Law Society. Mr Robertshaw was not present. The ICO then attended the offices of Thompson Garside where Mr Robertshaw was employed as an assistant solicitor. The ICO agreed with Mr Robertshaw that he would make arrangements for his books and records to be inspected on 30th October at those offices.
26. Mr Robertshaw telephoned the ICO before the inspection to postpone the inspection and it was re-arranged for 1st November 2001.
27. The ICO attended the offices again on 1st November 2001 to be told by Mr Robertshaw that he had a problem with the books. He said he would supply the ICO with some bank statements and other documents for the following day and contact the ICO. He also said that if he was unable to locate these, reconstruction would take approximately one week.
28. On 7th November 2001 the ICO contacted Mr Robertshaw and arranged to return to Thompson Garside's offices to continue the inspection on 13th November 2001.
29. On 13th November he attended those offices and was given a computer spreadsheet of the cash book held by Mr Robertshaw. He noted that the cash book commenced on 1st April 1999 and ended on 13th March 2000 whereas the bank statements indicated that transactions had continued until at least May 2001.
30. On the same day Mr Robertshaw left for his home address by agreement to collect the balance of documents and returned with four further bank statements in his possession. He admitted to the ICO that the client ledgers were not complete and he had done no reconciliation. He also said that the cash book was not complete and he had failed to make available any client ledger accounts, client matter files, client or bank reconciliations and that the bank statements made available were incomplete.
31. In view of the foregoing the ICO terminated the inspection.

32. Following the submission of the Report to The Law Society, the OSS wrote to Mr Robertshaw by letter dated 7th January 2002 seeking an explanation. The OSS wrote again on 4th March 2002, again on 18th March 2002 with a further letter on 7th May 2002.
33. No response was received to any of the letters. On 14th June 2002 The Law Society resolved to intervene into Mr Robertshaw's practice. The intervention was effected on 26th June 2002.
34. On 19th July 2001 an OSS adjudicator lifted the automatic suspension (upon his bankruptcy) of his Practising Certificate for the year 1999-2000 subject to the condition of approved employment. His employment as an assistant solicitor with Thompson Garside Limited was approved for the purpose of that condition.
35. The Third Respondent's Practising Certificate was terminated on 6th November 2001 because he failed to file the relevant forms to apply for a Practising Certificate for the year 2000-2001 despite having been sent a number of reminders.
36. Mr Robertshaw's Accountant's Report for the period ending 31st March 2002 was due for delivery by 30th September 2002.
37. The OSS wrote to Mr Robertshaw by letter dated 22nd October 2002 and by letter dated 19th November 2002 requesting delivery of the outstanding Report but received no reply.
38. The OSS was aware that from about October 2002 Mr Robertshaw no longer lived at the address to which the requests were sent, but The Law Society had been given no forwarding address.

The Submissions of the Applicant

39. It was Mrs Garside's position that she had been in control of the practice of Thompson Garside Limited trading as Thompson Garside Solicitors for a period of three days during which Mr Robertshaw had been employed whilst his Practising Certificate had been suspended. The Applicant agreed that that was the position. Mrs Garside had been referred to the Tribunal because a finding that a solicitor had employed a suspended solicitor attracted a mandatory statutory penalty. The Applicant agreed that Mrs Garside's involvement in this matter had been at the lowest end of the scale.
40. The Tribunal would note that Mrs Garside did not admit the allegation but had indicated that she was responsible for those three days but raised the qualification of Article 6 of the Convention for the Protection of Fundamental Human Rights and Fundamental Freedoms agreed by the Council of Europe in 1950. She also cited cases which were relevant to criminal proceedings. It has been established by the case of Pine v. The Law Society and the SFA v. Fleurose that professional disciplinary proceedings are civil in their nature and the cases cited were not relevant to these professional disciplinary proceedings.
41. With regard to Mr Robertshaw, the facts spoke for themselves. Mr Robertshaw had practised as an assistant solicitor or as a locum when his Practising Certificate had

been suspended. When the suspension had been lifted the Practising Certificate granted to Mr Robertshaw was subject to the condition that he practise only in approved employment and he was not certificated to hold clients' money. He had nevertheless continued to hold clients' money.

42. Despite holding clients' money Mr Robertshaw had failed to lodge the required Accountant's Report. He had maintained three general client accounts upon which transactions had taken place up to May of 2001.
43. Mr Robertshaw had failed to keep proper books of account and had failed to make such books available to an ICO carrying out an inspection on behalf of the OSS. The Tribunal might think that the ICO had demonstrated a considerable degree of patience.

The Submissions of Mrs Garside (in her statement filed with the Tribunal and referred to above under the heading "The Evidence Before the Tribunal")

44. Mrs Garside had worked in private practice for several firms, mainly concentrating on matrimonial law.
45. In October 1999 Mrs Garside joined her husband's firm, Thompson Garside & Co, with the intention of taking charge of a new branch office.
46. In May 2000 Mr Robertshaw joined the practice as a full time self-employed locum and operated from the firm's Halifax office. His competence was not in question.
47. After deciding to incorporate the practice into a limited company, the First Respondent and Mrs Garside, Mr Robertshaw and one other became members.
48. Approval was granted by The Law Society in October 2000 that the company be treated as an approved body.
49. In the Summer of the year 2000 Mrs Garside started to suffer with her health. She became extremely tired and had to stop work for a while. She tried to return to work around Christmas time but eventually had to give up work in January 2001 having been diagnosed as having chronic fatigue syndrome. She had not worked since that time.
50. In the Spring of 2001 the First Respondent was experiencing severe financial difficulties in the management of Thompson Garside & Co. He decided to sell the office in Halifax and concentrate on the practice in Hebden Bridge. He transferred the business of Thompson Garside & Co to Thompson Garside Limited commencing trading from Hawkstone House on 2nd July 2001. The First Respondent had not discussed the affairs of the business with Mrs Garside in great detail because of the nature of her illness. When the Halifax office was closed Mr Robertshaw moved to Hebden Bridge.
51. Towards the end of June the First Respondent informed Mrs Garside that Mr Robertshaw had told him that morning that he had been made bankrupt some time earlier. Mrs Garside understood the effect of bankruptcy on one's ability to act as a

solicitor. She questioned his position in the practice but was assured steps had been taken to ensure that Mr Robertshaw was not being held out by the practice as a solicitor. The First Respondent said that Mr Robertshaw had told him categorically that the OSS had said it was alright for him to remain at the office in the limited capacity of a paralegal.

52. Mrs Garside understood that her husband received a telephone call on 5th July from the OSS. Following the telephone call the First Respondent ordered Mr Robertshaw immediately to leave the office.
53. During the three days that Mrs Garside was a director of Thompson Garside Limited when Mr Robertshaw remained at the office at Hawkstone House she had no direct involvement in the management of the business. She understood that Mr Robertshaw was receiving no remuneration for the work that he was carrying out at the office but was merely assisting in the finalisation or distribution of the files in his care. He was not salaried by the company.
54. At no time was any direct contact made with Mrs Garside with regard to this matter and she was not given any warning that anything that she might say would be used against her in disciplinary proceedings which could lead to the loss of her livelihood.
55. In the submission of Mrs Garside the procedures adopted by the OSS were contrary to Article 6 of The Convention on Human Rights in that she had not been afforded the protection universally recognised as fair in proceedings which have a serious consequence upon an individual or his ability to earn a living.
56. Mrs Garside invited the Tribunal to consider her limited involvement in this matter and her culpability when determining what is a fair and reasonable penalty to impose.
57. It might well be that the Tribunal feels that it has no option but to impose one of the penalties imposed by statute but hope that the penalty imposed be restricted to the absolute minimum in view of the strong mitigating circumstances.
58. Mr Robertshaw made no response to the allegations nor did he make any submissions.

The Findings of the Tribunal

59. The Tribunal finds the allegation against Mrs Garside to have been substantiated. The Tribunal recognises that she was in effect in breach of Section 41 of the Solicitors Act 1974 without being aware of that fact and therefore for only three days. The Applicant himself accepted that her involvement was at the lowest end of the scale. The Tribunal was required by statute to impose a mandatory sanction either of striking off the Roll or suspension from practice. In view of the minor nature of Mrs Garside's breach the Tribunal considers that it would be disproportionate to order that she be struck off the Roll of Solicitors. They are, however, compelled to impose a period of suspension upon her. Again in view of the minor nature of the breach the Tribunal considered it right that the sanction should be limited to a period of seven days.

60. The Tribunal find all of the allegations to have been substantiated against Mr Robertshaw. Mr Robertshaw appears to have abrogated his responsibilities as a solicitor and to have behaved in a cavalier and foolish manner. It is particularly noteworthy that his actions had so seriously affected Mrs Garside. The Tribunal, mindful of its duty to protect the public and the good reputation of the solicitors' profession, considered that it was right that Mr Robertshaw should not be permitted to return to practice as a solicitor until such time as he could come before the Tribunal and convince it, in the first place, that all of his regulatory breaches had been rectified and that he was a fit and proper person to practise as a solicitor. In order to achieve that end, the Tribunal ordered that Mr Robertshaw be suspended from practice for an indefinite period of time.
61. The question of the Applicant's costs arose. He had helpfully prepared a schedule of costs. He was able to identify which of the costs specifically related to Mr Robertshaw. Of the costs which were general and related to all three of the Respondents, the Applicant argued that it would be appropriate to adopt a "broad brush" approach and simply divide those costs equally between the Respondents. The Tribunal considered that that was an appropriate and proportionate approach. Because the Tribunal considered that the costs sought by the Applicant were very reasonable it decided that it would be right in order to save time and further cost to grant the Applicant an order for costs against Mrs Garside and Mr Robertshaw in a fixed sum.

DATED this 30th day of April 2003
on behalf of the Tribunal

J C Chesterton
Chairman