

IN THE MATTER OF TIMOTHY NIGEL VANE HUSBANDS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. R J C Potter (in the chair)
Mr. P Kempster
Mr. D Gilbertson

Date of Hearing: 21st January 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 (the "OSS") by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts, SG14 1BY on the 27th May 2002 that the Respondent Timothy Nigel Vane Husbands (a solicitor) of Holmes Crest, 124 High Street, Hinderwell, North Yorkshire, TS13 5ES might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thinks right.

On the 10th December 2002 the Applicant made a supplementary statement containing further allegations. The allegations set out below are those contained in the original Rule 4 Statement.

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

1. He did use for his own purposes monies belonging to a trust fund;
2. Being a principal in sole practice who had been suspended for an indefinite period of time by the Solicitors Disciplinary Tribunal he did allow his practice to remain open and failed to make proper arrangements for its disposal;

3. He provided misleading information to a client;
4. He failed to reply to correspondence from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admission of the facts by the Respondent. He denied that he had been dishonest. A bundle of letters in support of the Respondent was handed up at the hearing.

At the conclusion of the hearing the Tribunal ordered that the Respondent, Timothy Nigel Vane Husbands of Holmes Crest, 124 High Street, Hinderwell, North Yorkshire, TS13 5ES solicitor, be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,600 inclusive.

The facts are set out in paragraphs 1 to 14 hereunder:-

1. The Respondent, born in 1963, was admitted as a solicitor in 1992. At the material times he practised on his own account under the style of Timothy N V Husbands, Solicitor at 1 High Street, Loftus, Saltburn By-The-Sea, Cleveland, North Yorkshire, TS13 4HW.
2. Another occupant of the Respondent's practising address was an undertaker, Mr H T. He operated a funeral pre-payment scheme whereby clients paid money into a Trust Account to defray their funeral expenses. This account was held with Darlington Building Society and the Respondent was a co-signatory with Mr H T. A copy of the passbook was before the Tribunal. Under the heading "Names" appeared H T and the Respondent. The first line of the address was stated to be "Trustees for H T".
3. In September 1999 an amount of £29,121.00 was withdrawn from the trust account and paid into the Respondent's personal account with Midland Bank, Chelmsford on 8th September 1999. The Respondent used for his own purposes two separate sums of £3,000 and £1,000 respectively which properly should have been lodged in the trust account.
4. It was the Respondent's position that Mr H T lent him the money on or about the 18th August 2000. The Respondent signed a promissory note in the following form:-

"THIS AGREEMENT is made on 18th day of August 2000

BETWEEN

H T of

and

TIMOTHY NIGEL VANE HUSBANDS of Holme Crest 124 High Street,
Hinderwell, Saltburn by Sea

WHEREAS

1. The said Timothy Nigel Vane Husbands is seized of the property known as Holme Crest 124 High Street, Hinderwell, Saltburn by Sea
2. The said H T has lent to the said Timothy Nigel Vane Husbands the sum of £33,000.00

IT IS HEREBY AGREED AS FOLLOWS:-

1. That the said money advanced by H T will be repaid to him on forty eight days notice

Signed by the said
Timothy Nigel Vane Husbands

Signed by the said
H T”

5. Mr and Mrs H T instructed a firm of solicitors with a view to recovering the monies and correspondence ensued between them and the Respondent. The Respondent never sought to deny that he had the monies. He made offers to settle the matter by having a charge put against his home and to pay off the debt by monthly instalments. The Respondent paid the amount in full on the 22nd April 2002. The Respondent asserted that the monies he received were by way of a loan from Mr H T.
6. The matter was eventually brought to the attention of the OSS by The Law Society’s intervention agents. The Respondent’s explanation was sought by way of a letter to him from the OSS dated 25th January 2002. No response was received to this letter. (The letter was sent to his former practising address which by then he might have vacated).
7. On 19th September 2000 the Tribunal made an Order indefinitely suspending the Respondent from Practice. The Respondent’s practice continued to operate under his name and on 25th April 2001 his explanation for this was sought. The Respondent replied on 2nd May 2001. By this time he had an application pending for the suspension to be lifted by the Tribunal.
8. The OSS therefore deferred taking further action until the Tribunal’s decision in the application, which was heard on 3rd August 2001. The Tribunal declined to lift the suspension.
9. On the 6th August 2001 the OSS wrote to the Respondent asking him what arrangements had been put in place for dealing with the situation. He replied on 14th August 2001 in the following terms:-

“Dear Mrs Hanson,

Re Your reference REG/10089-2001

I thank you for your letter dated 6th August.

I can confirm that Mr Smith of Skelton has agreed to continue to act as Locum for the time being.

I am looking into a number of the possible alternatives. The first is the possibility of selling the practice, the second is the closure of the practice and of course seeking to see how I can have the suspension lifted.

Yours faithfully”.

10. On the 22nd August 2001 The Law Society resolved to intervene into the Respondent’s practice.
11. During 2000 the Respondent had been acting for clients, Mr & Mrs B, in connection with proposed proceedings in the County Court. Mr & Mrs B wanted to make a claim against another party and it was clear from the Respondent’s letter to them of the 7th July 2000 that he was contemplating issuing proceedings on their behalf. A further letter of the 8th January 2001 confirmed that.
12. On the 18th January 2002 Mr & Mrs B made a complaint to The Law Society. They had been told by the Respondent sometime in 2000 that the case had been taken to Court and Judgement had been obtained in their favour. When they had last spoken to him in August 2001, he informed them that the bailiffs had collected most of the debt and he would check upon this. After that, the intervention took place.
13. Enquiries made by and on behalf of Mr & Mrs B with the County Court revealed no trace of any action having been brought in their name at all. The Intervention Agents were unable to locate anything within the files which they retrieved from the Respondent to indicate that proceedings had ever been issued.
14. On the 9th April 2002 the OSS wrote to the Respondent seeking his observations on the matter within 14 days. No response was received to that letter. The OSS wrote another letter to the Respondent on the 11th June 2002. This letter included a warning that any failure to respond could be regarded as unprofessional conduct and that if he failed to respond within fourteen days he would be at risk of disciplinary proceedings. No response was received from the Respondent.

The Submissions of the Applicant

15. The Applicant was not in a position to dispute the Respondent’s evidence that Mr H T lent him money totalling £33,000. The Applicant accepted that that might well have been the case and also that it was the Respondent’s intention to repay the money. However as a solicitor the Respondent should have appreciated the sacrosanct nature of trust funds. The Applicant accepted that the whole of the money had been repaid.
16. The Tribunal was invited to consider the test of dishonesty contained in the case *Twinsectra v Yardley* which in summary was “would an honest solicitor have acted as the Respondent did? Did he know that what he was doing was wrong?”.

17. The Respondent had submitted in the course of correspondence that his borrowing of the money had not happened in the context of his legal practice. The Tribunal was invited in that regard to consider The Guide to the Professional Conduct of Solicitors published by The Law Society (8th edition) at paragraph 1.08 “behaviour outside legal practice” - solicitors are officers of the court, and must conduct themselves so as not to bring the profession into disrepute. The commentary to that principle was:-
- (i) Solicitors whether practising or not are officers of the supreme court. Certain standards of behaviour are required of solicitors as officers of the court and as members of the profession, in their business activities outside legal practice and even in their private lives. Disciplinary sanctions may be imposed if, for instance, a solicitor’s behaviour tends to bring the profession into disrepute.
 - (ii) When solicitors are acting on their own behalf, whether in conveyancing, litigation or any other legal matter, they are expected to observe the same standards of conduct as are required in the course of practice.
18. With regard to the misleading information given to Mr & Mrs B, an honest solicitor would not have told a client that court proceedings had commenced and the bailiffs had been instructed if that had not been the case. The Respondent would say that he might have told Mr & Mrs B that but his practice was being run by someone else at the material time and he did not know what was going on. The Respondent should not have told the client what was the position in their matter without being absolutely certain that the information he was giving was correct.

The Submissions of the Respondent

19. With regard to the allegation that he had taken money from the trust fund, the Respondent accepted that the building society passbook referred to Mr H T and the Respondent as trustees. In the submission of the Respondent they were trustees for Mr H T. It was not possible for a beneficiary to be the only trustee. The Respondent accepted that the true beneficiaries of the trust were those who had paid in advance for funerals.
20. In the Respondent’s submission the true interpretation was that the money was not trust money. There were two signatures on the account. Mr H T had wanted the account to be closed so that members of his family would not know about it. He had lent the money to the Respondent who had signed a promissory note after the loan had taken place. The Respondent had not in any way been dishonest. The loan had been a private matter between Mr H T and the Respondent. The matter had been dealt with outside the Respondent’s practice as a solicitor. The Respondent believed it was in order for him to accept receipt of those monies.
21. With regard to the suggestion that the Respondent had continued to run his sole practice after being suspended from practice the Respondent said he was not permanently in the office. He had attended on occasions when a problems had arisen and he had been called in to assist.
22. The Law Society had not pursued this matter with any vigour having decided to leave it in abeyance until the outcome of the Respondent’s application to the Tribunal to

have the indefinite period of suspension determined. The Tribunal had refused his application and he agreed that his practise had continued to run from the date of the Tribunal's refusal, 3rd August, to 22nd August, the date of The Law Society's intervention into the practice. During that time the Respondent had been trying to dispose of his business.

23. With regard to the complaint by Mr & Mrs B, the Respondent said that he regretted the misunderstanding between himself and Mr & Mrs B. Originally it had been agreed that costs would be recovered from the flooring supplier defendant and Mr B would not be put to any expense. At the time when it was alleged that Mr B had been misled the Respondent had been suspended from practice and did not have any day to day involvement with the conduct of Mr & Mrs B's matter. The Respondent had given information to Mr B which he believed to be correct but it transpired that it was not. The letter written to Mr B had been signed by a locum solicitor.
24. The Respondent expressed his regret at being called to appear before the Tribunal. He had worked long and hard for the benefit of many clients over the years. He invited the Tribunal to give due weight to the bundle of letters handed up by the Respondent in his support.

The Findings of the Tribunal

25. The Tribunal found all of the allegations to have been substantiated and did make a finding that the Respondent had been dishonest.
26. At a hearing on 19th September 2000 the Tribunal found the following allegations to have been substantiated. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that he had:-
1. Failed to comply with professional undertakings;
 2. Failed to reply with correspondence and telephone calls from the Midland Bank and from other solicitors;
 3. Failed to reply to correspondence and telephone calls from the OSS;
 4. Failed promptly and thoroughly to investigate a complaint made by a client.

On that occasion the Tribunal said:-

“the Tribunal found the allegations to have been substantiated indeed they were not contested. The Respondent had failed to honour his undertakings which was a very serious matter. Even at the date of the present hearing Malcom C Foyier & Co Solicitors had not received the outstanding form DS1 (form 53). The Respondent therefore still had an outstanding failed undertaking.

The Respondent had told the OSS that he would take steps which he had then not taken. He had not provided a satisfactory explanation as to his conduct of failures.

His failures had caused inconvenience and anxiety to clients and to members of the solicitors profession, such behaviour damaged the reputation of the profession. He had not carried out his responsibilities as a solicitor and the public needed to be protected from him. The Tribunal therefore ordered that the Respondent Timothy Nigel Vane Husbands solicitor be suspended from practice for an indefinite period of time to commence on the 19th September 2000 and they further ordered him to pay the Applicant's fixed costs".

27. By an affidavit dated the 29th January 2001 the Respondent made an application to the Tribunal that the period of indefinite suspension imposed upon him by the Tribunal on the 19th September 2000 be terminated.
28. On the 6th June 2001 the Applicant made another application on behalf of the OSS that the Respondent might be required to answer allegations contained in the statement which accompanied the application. The allegations on that occasion were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars:-
- i He provided misleading information to a client;
 - ii. He failed to respond promptly to correspondence from the OSS and his client;
 - iii He failed to comply with a decision of a senior advisor of The Law Society.
29. In its findings dated the 27th September 2001 the Tribunal said:-

"The Tribunal found the allegations to have been substantiated. The Tribunal accepted that the complaint before them in July 2001 was inextricably linked to the earlier matters before the Tribunal which had taken place in 1997 and 1998. In all of the circumstances the Tribunal considered it right to impose no further sanction upon Mr Husbands believing as they did that had this matter been dealt with, with the earlier matters then the sanction imposed, namely that of indefinite suspension, would not have been any different. It had to be said that Mr Husbands had brought matters upon himself by his failure to answer letters. It was right, however, that Mr Husbands should pay the costs of and incidental to the application and enquiry.

The Tribunal noted that Mr Husbands' application was based in part upon his submission that one year's suspension imposed upon him was a sufficient punishment for his wrongdoing. The second submission made by him was that he had undertaken a great deal of good and useful work for his clients and had provided them with a good service. The Tribunal noted the letters of appreciation received from clients which had been placed before them.

As Mr Husbands himself pointed out the pressures on a high street practice and a high street practitioner are great and are even greater when that practitioner is a sole principal. Mr Husbands appeared to have adopted the view that having been punished he could return to sole practice, despite his history of failures.

The Tribunal accept that the imposition of the sanction by the Tribunal can and sometimes does have a punitive element. The Tribunal's paramount duty

is to ensure that the interests of the public are protected and it has a further important duty to ensure that the good reputation of the solicitors profession is maintained. Having given due consideration to the submissions made by Mr Husbands and noting as they do that he has not appeared to have undertaken any training or sought to gain any experience that might assist with his future practice as a solicitor and because the Tribunal continues to be concerned about the protection of the public and the good reputation of the solicitors profession the Tribunal refused to grant Mr Husbands' application that the indefinite period of suspension imposed upon him be determined. The Tribunal ordered that Mr Husbands pay Mr Battersby's costs in responding to the application. The Tribunal noted that the fixed sum requested by Mr Battersby included both Mr Battersby's own application and his response to Mr Husbands' application. The Tribunal made an Order for costs in that fixed sum, which was agreed by Mr Husbands".

30. At the conclusion of the hearing on the 21st January 2003 the Tribunal found all of the allegations to have been substantiated against the Respondent, indeed he did not contest them save he contested having been dishonest. The Tribunal found that the Respondent was dishonest.
31. The Tribunal was in no doubt that the Respondent had clearly demonstrated dishonesty when he had told Mr & Mrs B that their case had been proceeded with, judgment had been obtained and, indeed, the bailiffs had been instructed to assist with the collection of their money. The reality was that no steps had been taken at all. The Tribunal applied the test in *Twinsectra v Yardley* and considered that no honest solicitor would behave in that way. The Respondent could not have believed that what he was saying was true as it patently was not. There was no doubt that he must have been aware that he was being dishonest.
32. With regard to the loan of monies to the Respondent from the trust fund, the Tribunal deprecates the Respondent's behaviour in this respect. Every solicitor is aware of the sacrosanct nature of trust funds. The Respondent proceeded to borrow the money where there was a gross lack of formality. Even if Mr H T could have authorised the loan, the Respondent could not have accepted it without ensuring that Mr H T had formal independent advice.
33. The Tribunal had regard to principle 1.08 in *The Law Society's Guide to the Professional Conduct of Solicitors* and was in no doubt that the Respondent's behaviour did amount to conduct unbecoming a solicitor even though it might well have been that the loan transaction was negotiated and completed outside his practice as a solicitor. That being the case the Respondent was nevertheless a solicitor and was obliged to abide by the stringent rules put in place to protect the public.
34. The Tribunal considered that the Respondent's failures were grave because he was aware of the source of the funds, and had not insisted that Mr H T took independent advice before making the loan. This was a clear indication that the Respondent had not dealt with this matter in an open and aboveboard way. The Respondent in this respect had not acted as an honest solicitor would. The Respondent ought to have been aware of the fact that what he was doing was wrong.

35. The Tribunal accepted that at least one letter addressed to the Respondent by the OSS might not have reached him as it was sent to his old practising address. There were, however, other letters which had been addressed to the Respondent to which he did not reply. When a solicitor does not reply to letters addressed to him by his own professional body he undermines The Law Society's position as a regulator and this in turn serves to undermine the confidence that members of the public have in the Solicitors' profession.
36. The Tribunal regarded it as particularly serious that the Respondent appeared to continue in practice as a sole principal even when he had been suspended from practice. The Tribunal notes and accepts that the Respondent had taken some comfort from the fact that The Law Society had adopted a relaxed position with regard to this until the Respondent's application to the Tribunal for the indefinite suspension imposed upon him to be lifted was refused.
37. The Tribunal could not help but note that the refusal of the Respondent's application could only be seen as an endorsement of the indefinite suspension imposed upon the Respondent and his continuing to practise, albeit for a relatively short period of time thereafter, was a particularly flagrant breach which the Tribunal regarded as grave. Cumulatively and in each individual circumstance the Respondent's behaviour fell very far short of the high standards of integrity, probity and trustworthiness required of a solicitor.
38. In all of the circumstances the Tribunal concluded that it was right that the Respondent should be struck off the Roll of Solicitors. Further the Tribunal ordered that the Respondent pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 20th day of February 2003

on behalf of the Tribunal

R J C Potter
Chairman