

IN THE MATTER OF HARGOPAL SINGH BAINS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr W M Hartley (in the chair)  
Miss T Cullen  
Mrs S Gordon

Date of Hearing: 7<sup>th</sup> January 2003

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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 Andrew Miller solicitor employed by The Law Society at the OSS at Victoria Court, 8 Dormer Place, Leamington Place, Warwickshire CV32 5AE on the 11<sup>th</sup> June 2002 that Hargopal Singh Bains of Rochester, Kent, solicitor 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects in that he had:-

- (i) Contrary to Rule 32(7) of the Solicitors Accounts Rules 1998 ("SAR 1998") failed to effect bank reconciliations of his former firm's accounts not less than once every five weeks;
- (ii) Contrary to Rule 1(g) of SAR 1998 failed to keep proper accounting records so as to show accurately the position with regard to money held for clients;
- (iii) Contrary to Rules 19(2) and 19(3) SAR 1998 transferred money from client account to office account other than in accordance with the provisions of those Rules;

- (iv) Utilised client monies for his own benefit;
- (v) Failed promptly to perform professional undertakings; and
- (vi) Failed promptly to deal with correspondence from the OSS.

For the avoidance of doubt the Applicant confirmed to the Tribunal that he put allegations (iii) and (iv) as allegations involving dishonesty on the part of the Respondent.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 7<sup>th</sup> January 2003 when Andrew Miller appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included certain admissions of the Respondent contained in his letter addressed to the Applicant dated 29<sup>th</sup> October 2002 which was before the Tribunal. The Respondent denied that he had been dishonest.

At the conclusion of the hearing the Tribunal ordered that the Respondent Hargopal Singh Bains of Rochester, Kent, 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 £1,570 together with the costs of The Law Society's Investigation Accountant to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 18 hereunder:-

1. The Respondent, born in 1965, was admitted as a solicitor in 1992.
2. From August 1993 until 31<sup>st</sup> July 2000 the Respondent practised in partnership with a Mr R J Patel under the style of Bains & Partners, Solicitors, at 91 Balham High Road, London, SW12 9AP. From 1<sup>st</sup> August 2000 until September 2001 the Respondent practised as sole principal under the same style and at the same address. On 20<sup>th</sup> September 2001, The Law Society intervened into the Respondent's practice.
3. Pursuant to notice duly given an Investigation Officer of The Law Society commenced an inspection of the Respondent's practice books of account on 13<sup>th</sup> September 2001. A copy of the Investigation Officer's Report dated 19<sup>th</sup> September 2001 was before the Tribunal. The Report revealed the following matters.
4. The Respondent's books of account were not in compliance with the SAR 98 as it was found that, although the Respondent maintained individual client ledger accounts in respect of client matters, no client cash book had been maintained later than 30<sup>th</sup> April, 2000. No client bank account reconciliations had been prepared in the previous sixteen months. The Investigation Officer noted that client bank account had been charged with numerous round sum transfers from client to office bank account which, were found in the main not to have been allocated to any specific account in the clients' ledger.
5. The Respondent said during the course of the initial interview with the Investigation Officer that due to pressure of work he had experienced difficulties in maintaining his books of account in accordance with the SAR 98 and he said that the reconciliation of clients' cash was in arrears.

6. In view of the failures to comply with SAR 98 the Investigation Officer could not express an opinion as to whether or not sufficient funds were held in client bank account to meet the firm's total liabilities to clients as at 16<sup>th</sup> August, 2001. From available documents he was able to compute that a minimum liability to clients of £34,409.06 existed at 16<sup>th</sup> August, 2001 in respect of the under-mentioned seven clients alone:-

Mrs C	£15,000.00
Mr & Mrs M and Mr & Mrs A	7,400.00
Mr & Mrs H	2,750.00
Miss L G	5,030.00
Mr M M	1,655.00
Ms C & Ms O	1,274.06
Mr & Mrs N	<u>1,300.00</u>
	<u>£34,409.06</u>

7. A comparison of the minimum liability figure with cash held on client bank account at 16<sup>th</sup> August 2001 revealed a minimum cash shortage of £31,493.11. The Respondent agreed, and said he would notify the OSS when he had replaced the shortage.
8. In view of the state of the Respondent's book keeping the Investigation Officer was not able to account precisely for the minimum cash shortage. He considered it likely, that the under-noted transfers from client to office bank account were a contributory factor.
9. During the period 10<sup>th</sup> November 2000 to 5<sup>th</sup> June 2001 seventeen transfers varying in amount between £1,200.00 and £6,000.00 and totalling £51,700.00 had been made from client to office bank account which, in the main, had not been allocated to any specific client ledger.
10. On 14<sup>th</sup> September 2001 the Respondent was asked to explain why these transfers had been effected. He explained that since his former partner had resigned in July 2000 the firm had been suffering cash flow difficulties and believed that there were un-transferred costs available in client account. He had transferred round sum amounts from client to office bank account to support office expenditure. Where possible, he had allocated these transfers to specific client matters at a later date.
11. The Investigation Officer's analysis of the position was as follows:-

<u>Date</u>	<u>Amount Transferred</u>	<u>Amount Allocated to Individual Client Matters</u>	<u>Improper Transfers</u>
2000			
	£3,000.00		
10 November	2,000.00	£1,162.71	1,837.29
20 November	2,000.00	973.38	1,026.62
28 November	3,000.00	375.88	1,624.12
04 December		-	3,000.00

2001	3,000.00		
	6,000.00	-	3,000.00
05 January	*5,000.00	470.00	5,530.00
06 February	*5,000.00	-	5,000.00
24 April	<u>£29,000.00</u>	-	<u>5,000.00</u>
01 May		<u>£2,981.97</u>	<u>£26,018.03</u>

\* The Respondent had been unable to provide documentation in respect of these transfers and, therefore, he was unable to confirm that the transfers were in respect of costs properly due to the firm.

12. On 16<sup>th</sup> January 2001 complaint was made to the OSS concerning the Respondent by the National Westminster Bank plc. The Bank said that the Respondent had failed to comply with undertakings to register charges by which loans were secured and forward title deeds. The relevant undertakings had been given on 26<sup>th</sup> November 1998 and 18<sup>th</sup> December 1998. They had been endeavouring unsuccessfully to obtain information from the Respondent since 22<sup>nd</sup> February 1999. The Bank had addressed letters to the Respondent on: 22<sup>nd</sup> February 1999, 23<sup>rd</sup> April 1999, 18<sup>th</sup> June 1999, 26<sup>th</sup> April 1999, 20<sup>th</sup> June 1999, 1<sup>st</sup> August 1999, 10<sup>th</sup> February 2000, 5<sup>th</sup> December 2000 and 16<sup>th</sup> January 2001. He had not answered any of them.
13. The OSS raised this matter with the Respondent by letter of 26<sup>th</sup> March 2001 and wrote further letters dated 2<sup>nd</sup> May 2001 and 30<sup>th</sup> October 2001. No response was received by the OSS until the Respondent's letter of 14<sup>th</sup> November 2001. Registration of the Bank's charge was eventually effected. In the light of this the Bank notified the OSS that they did not wish to take further action to recover the deeds to that property.
14. On 2<sup>nd</sup> March 2001 complaint was made to the OSS by Wintle & Co, Solicitors, of Bognor Regis. That firm had obtained judgment against the Respondent in the Chichester County Court on 26<sup>th</sup> February 2001 in the sum of £5,157.43 in respect of a claim that he had failed to perform an undertaking given in the course of professional business. They further complained that the Respondent had failed to deal with correspondence relating to the matter.
15. The complaint was raised with the Respondent's firm by the OSS letter of 6<sup>th</sup> April 2001 (addressed to his partner, Mr Patel). The OSS wrote again on 1<sup>st</sup> June 2001 to the Respondent personally.
16. No response was received by the OSS but a cheque for the sum of £5,157.43, paid to Messrs Wintle & Co by the Respondent in April 2001, was initially returned unpaid by the bank upon which it was drawn, but was subsequently met upon re-presentation.
17. On learning of the complaint in June 2001, Mr Patel paid Wintle & Co an agreed sum in respect of interest for the time they had been deprived of the use of their monies by the Respondent's delay.
18. A written explanation from the Respondent was not received until his letter of 10<sup>th</sup> September 2001 (enclosing an earlier letter of 5<sup>th</sup> June 2001 not received by the OSS).

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

19. The Respondent had made certain admissions in his letter of the 29<sup>th</sup> October 2002.
20. Seventeen round sum transfers had been made from client to office account and the Respondent had in his letter admitted making such transfers. It was accepted that some of those transfers had been allocated to individual client ledgers. In some cases the Respondent had accepted that the money had been transferred where bills were to be rendered. In this way the Respondent apparently had accepted that he had made transfers before any bill had been delivered to the client in breach of the SAR 98.
21. The way in which the Respondent had handled clients' money and conducted the keeping of his books of account did not demonstrate the right and proper way for a solicitor to handle such matters. The Respondent had indicated his belief that he had not used client funds for his own benefit but the reality was that he had.
22. The Tribunal noted that the Respondent disagreed with the record of the interview conducted with the Investigation Officer of The Law Society.
23. However, the Applicant did put the matter before the Tribunal as one involving dishonesty. The Respondent had, it was submitted, been dishonest in the sense that he had been guilty of conscious impropriety. A solicitor may not set his own standards of honesty. If a solicitor commits an act which he knows to be improper and lacking in probity then that is a dishonest act whatever the standard he sets for himself.
24. The Tribunal would also note that the Respondent considers that his former partner shirked his responsibility. The Tribunal would note that the former partner ceased to be a partner on the 1<sup>st</sup> August 2000.
25. The Tribunal would note that claims had been made upon The Law Society's Compensation Fund and a schedule setting out details of those claims and payments made was placed before the Tribunal.

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

26. The Respondent told the Tribunal that he did not wish to add to anything put in his letter of the 29<sup>th</sup> October 2002. He confirmed that he denied that he had been dishonest. He had never hidden anything from anybody. He showed everything to the Investigation Accountant believing that in fact he had nothing to hide.
27. The Respondent apologised to his clients and to the solicitors' profession both of whom he considered he had let down.
28. The contents of the Respondent's letter of the 29<sup>th</sup> October 2002 addressed to the Applicant may be summarised as follows:-
  1. In August 1993, the Respondent left his assistant solicitor's job in Wandsworth together with two others to join Mr R Patel in a new firm "Nurdin & Partners" at Balham.

2. Mr Patel and the Respondent had taken their law degrees and The Law Society's Finals course together. The Respondent regarded Mr Patel as a close friend and someone in whom he placed a considerable amount of trust and reliance.
3. In 1995 Nurdin & Partners became Bains & Partners in which the Respondent and Mr Patel were partners.
4. The firm outgrew its first floor rear premises and in April 1999 moved to Balham High Road, where they took on a 15 year lease of a ground floor and basement premises at a full rack rent.
5. The Respondent had a heavy caseload (conveyancing and criminal) and shouldered the full responsibility of the day to day administration and management of the busy high street practice including meeting Legal Aid Franchise requirements.
6. Mr Patel left the firm at short notice. The Respondent was left alone with the financial commitments relating to the new premises.
7. At the same time the Respondent's father was suffering from mesothelioma, a terminal condition. The Respondent always relied on him for support. He was now dependant on the Respondent from his everyday physical needs. His father's condition steadily deteriorated and caused the Respondent much stress until his death.
8. Between the time of his father's diagnosis in 1998 and death in 2000 the only time the Respondent took off from work was to nurse his father and take him to and from hospitals. Mr Patel did not assist the Respondent with his case load at this time.
9. In February 2000 the Respondent's third child was born. His wife suffered from severe post-natal depression. The Respondent was not able to take any time off work either to celebrate the birth or to support his wife. The Respondent's wife's need for support and her depression was made all the greater by the fact that her mother was suffering from a mental breakdown following the death of her son. Her father, who was registered blind, was involved in a near fatal road accident which left him hospitalised for over three months. The burden of looking after her parents (who lived in Leicester) fell upon the Respondent's wife. This meant that the Respondent had to look after the three young children most weekends.
10. The Respondent tried to deal with everything himself but without intending it, and despite his best efforts, he let matters slip. The Respondent had no one to whom he could turn for support.
11. It was the Respondent's position that Mr Patel remained his partner at the material times. He agreed he would help the Respondent to dispose of the firm however long it took, but his interest in achieving that end was not as great as the Respondent's.

12. The Respondent advertised the firm in The Law Society Gazette in September 2000 for sale/partnership/merger. The wording of the advert had been agreed between the Respondent and Mr Patel. Unfortunately the death of the Respondent's father on the 31<sup>st</sup> October 2000 put back his efforts to move on. He was to unable to follow up the enquiries received to the advertisement.
13. In March 2001 the Respondent found himself before the Solicitors Disciplinary Tribunal. He was fined and a recommendation made that he did not practise alone and any employment be approved by The Law Society. The Respondent did not appeal that decision as he had never wanted to practise alone.
14. The Respondent had sought employment but had encountered difficulties. A firm which offered employment was refused approval by The Law Society.
15. The Respondent did not dispose of his practice to an interested solicitor because he felt he would not cater for the interests of Mr Patel's clients and the staff. There had been many times when the Respondent felt like walking away but he had accepted his responsibility to the clients and staff of his firm.
16. Starting in the second half of 2000 the Respondent had with the assistance of his staff closed a lot of files, brought the VAT records up to date and dealt with a lot of files (including those of Mr Patel) that had been gathering dust, with a view to closing the firm in an orderly proper manner.
17. The Respondent co-operated with The Law Society's Investigation Officer, admitting to him at the outset that the client account ledgers were not up to date, but that they would be in the ensuing few weeks, as that was all that remained to be done to enable Mr Patel's accountants to complete the accounts for the year ending April 2001 and to sign off their Report to The Law Society by the end of October 2001.
18. The Respondent admitted that client bank reconciliations had not been done since April 2000. He did try to keep up to date all the records of the files he was currently working on; he recorded his various transactions on his conveyancing files on the individual client ledgers as and when they occurred.
19. The Respondent admitted that not all the client ledgers were up to date and that client bank reconciliations had not been done since April 2000, and thus there was not a 100% accurate record of money held for clients. The client ledgers of the files he was currently working on were up to date. These accounted for approximately 50% of all client files on which money was held for clients. The other 50% of the total client files with money held for clients were Mr Patel's litigation files, with the money representing divorce settlements, 50% were up to date. It was only when a reconciliation was being done that the ledgers were checked and brought completely up to date and that any inaccuracies in the recording of those ledgers would have been revealed.
20. The Respondent admitted allegations (iii) and (iv) – subject to his remarks below. He admitted allegations (v) and (vi).

21. The Respondent admitted that seventeen round sum transfers had been made but not all round sum transfers had not been allocated to any specific account/client ledger. Some of the amounts of the individual transfers were so allocated. The transfers were made in the honest belief that the amounts were legitimately due to the firm in respect of bills rendered or to be rendered and as such were proper transfers. The Respondent had been able to identify that approximately £10,000 of the sum of £26,018.03 could be accounted for as fees due to the firm and the amount of £10,000 was properly transferred.
22. The Respondent had been able to reconcile the clients' accounts with assistance of an accountant and had identified a maximum shortfall at 16<sup>th</sup> August 2001 of approximately £25,000. £15,000 of that shortfall had arisen in a conveyancing matter of which Mr Patel had conduct . Immediately on becoming aware of the position, the Respondent took steps to ensure that the money was accounted for to the client, subject to any Legal Aid statutory charge.
23. The Respondent had indicated to The Law Society that he intended to make good this shortfall. He did not offer to replace the shortfall out of any sense of guilt, but because he felt obliged to the firm's clients who should not have to suffer as a result of his failures to keep the accounting records up to date. He did not want the firm's clients to be at the mercy of the Compensation Fund and ultimately burden the solicitors who contribute to the Fund.
24. The Respondent admitted the allegation made by Natwest Bank but he did eventually effect the registration of Natwest's charge and so they were taking no further action.
25. The Respondent admitted the alleged breach of undertaking. The file relating to the matter was that of Mr Patel. The Respondent had no idea that he had given any undertaking on it. The Respondent left Mr Patel to deal with his own files, even after his departure.
26. The Respondent refuted any allegation of dishonesty on his part in making round sum transfers from client to office account. He strenuously denied any act of dishonesty on his part. He genuinely believed that any sum transferred was rightfully owing to the firm for work done. The Respondent had never nor would he ever knowingly or intentionally misappropriate client funds. He did accept that there was a shortfall in the client account. This was not the result of any dishonesty on his part, but rather a failure to keep proper accounting records for the last year or so of the firm's existence, due to exceptional circumstances, both professional and personal. Everything got on top of the Respondent and he was so overwhelmed by all the events that he let matters slip.
27. The Responded accepted that he had let the firm's clients and the profession down. However this was not intentional or the result of any dishonesty. The Respondent had not made any personal gain, financial or otherwise, from the transfers. On the contrary he had lost everything.



28. The Respondent had received counselling and had come to realise that he had not got over the death of his father. This contributed to the stress and pressures of running a busy high street practice.
29. The Respondent was devastated at losing his livelihood and his reputation as a result of the intervention. He was financially ruined; unable to provide for his children. The firm's bank and other creditors were taking legal action.
30. The Respondent hoped that he might be permitted to resurrect his career, but expressed himself to be resigned to being struck off or having such stringent conditions placed on his practising certificate that it would be almost impossible for him to practise as a solicitor.

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

29. The Tribunal found all of the allegations to have been substantiated. The facts were not in dispute, although the Tribunal noted that the Respondent did not consider that the record of his interview of The Law Society's Investigation Accountant was entirely accurate. The Tribunal has taken this into account and has not placed reliance on that record of interview.
30. Having found all of the allegations to have been substantiated the Tribunal did find that the Respondent had acted dishonestly.
31. On 27<sup>th</sup> March 2001 the Tribunal found the following allegations to have been substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that he had:-
  - (i) failed promptly to honour a professional undertaking given in the course of his business as a solicitor;
  - (ii) failed to reply to correspondence from the OSS;
  - (iii) failed to reply to correspondence directed to him on behalf of a former client;
  - (iv) failed to deliver over a former client's file as and when required;
  - (v) failed to perform a retainer within a reasonable time;
  - (vi) failed to comply with a direction given pursuant to Section 37(a) and Schedule 1(a) of the Solicitors' Act 1974.
32. On 27<sup>th</sup> March 2001 the Tribunal ordered that the Respondent do pay of £1,000, such penalty to be forfeit to Her Majesty The Queen, and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £904. The Tribunal further ordered that the Direction of the Compliance and Supervision Committee dated 13<sup>th</sup> September 2000 relating to inadequate professional services made in respect of the Respondent be treated for the purposes of enforcement as if it were contained in an order of the High Court.
33. On that occasion the Tribunal said:-
 

“The Tribunal considered that this was a very serious set of circumstances. The Respondent had paid the costs due in accordance with the undertaking only at the last minute. He had failed to respond to correspondence of his governing body. He had failed to hand over files to a client and had failed to complete work. He had failed to pay compensation to his client thereby

disregarding a direction of the Office and indeed had not addressed that failure to pay before the Tribunal.

The Tribunal was seriously concerned at the Respondent's conduct but wished to give him an opportunity to put matters right. The Tribunal noted that the Respondent was winding down his practice. The Respondent had told the Tribunal that he did not wish to be a sole practitioner. The Tribunal also took the view that the Respondent should not practise alone and would make a recommendation to The Law Society to that effect. The Tribunal was concerned to ensure that the Respondent paid compensation to Dr A as directed and that concern would be reflected in the orders made".

34. In making its finding in January 2003, the Tribunal applied the test in *Royal Brunei Airlines v. Tan* as recognised and modified in the case of *Twinsectra Limited v. Yardley and Others*.
35. The Tribunal is of the view that a solicitor who transfers money from client account to office account without checking to make absolutely sure that he is properly entitled to make such transfer in accordance with the Solicitors Accounts Rules which includes, of course, the fact that a bill must have been first delivered to the client, is either acting recklessly or is turning a blind eye to the fact that the sums which he seeks to transfer either do not represent the accurate figure which he is entitled to transfer or that he is not in fact entitled to make the transfer at all. It is so unusual for the correct figure to be in a round sum that the making of round sum transfers on a number of occasions is indicative of the failure on the part of a solicitor to make absolutely sure that he is properly entitled to make the transfers.
36. The Respondent himself accepted that in some of the cases where round sum transfers had been made he had not delivered a bill to the client concerned.
37. The Tribunal itself accepted that some of the transfers were allocated to specific client ledgers. A solicitor has a high duty to handle clients' money fairly and honestly and, indeed, has a duty to exercise a proper stewardship over such money. The way in which the Respondent handled clients money on the occasions cited by The Law Society's Investigation Officer fell very far short of that high standard and would without a finding of dishonesty on the Tribunal's part lead the Tribunal to conclude that the Respondent's failures were so great that the imposition of the ultimate sanction would be appropriate.
38. The Tribunal in this case consider that the Respondent's behaviour went further than a failure to exercise proper stewardship and did amount to dishonesty both in the sense that he turned a blind eye to the true position and in the sense that no reasonable and honest solicitor would have behaved in the way that the Respondent behaved. In all of the circumstances the Tribunal does not believe that the Respondent could have believed that he was acting in a proper and honest manner.
39. The Tribunal has taken into account the family difficulties encountered by the Respondent and has no small measure of sympathy for him in that regard. The Tribunal also notes that the Respondent considered that he was badly let down by his partner.

40. However strong this mitigation, the Tribunal is of the view that it does not excuse the Respondent's behaviour. A solicitor is and must be expected to exercise the highest standards of probity, integrity and trustworthiness however difficult his own personal circumstances might be.
  
38. The Tribunal considered it right that the Respondent should be struck off the Roll of Solicitors and further ordered that he should pay the costs of the application and enquiry in an agreed fixed sum. There was no figure made available to the Tribunal as to the costs of The Law Society's Investigation Officer and it ordered that the Respondent should pay those costs but they should be subject to a detailed assessment if the figure is not agreed between the parties.

DATED this 11<sup>th</sup> day of February 2003

on behalf of the Tribunal

W M Hartley  
Chairman