

IN THE MATTER OF CHRISTOPHER JOHN WILLIAM GAUVAIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss T Cullen (in the chair)  
Mr A G Ground  
Mr M C Baughan

Date of Hearing: 31st 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 ("OSS") by Geoffrey Williams, solicitor of 2A Churchill Way, Cardiff, CF1 2DW on the 17<sup>th</sup> July 2002 that Christopher John William Gauvain of Duddleswell, Ashdown Forest, East Sussex, 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:-

- (a) That he had drawn monies out of client account otherwise than as permitted by Rule 7 Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- (b) That he had carried out improper transfers of clients' funds to the ledgers of other clients contrary to Rule 10 Solicitors Accounts Rules 1991.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 31<sup>st</sup> January 2003 when Geoffrey Williams of Geoffrey Williams &

Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff, CF1 2DW appeared as the Applicant. The Respondent did not appear and was not represented.

### The evidence before the Tribunal

The documentary evidence had been served upon the Respondent. The Applicant had served a Civil Evidence Act Notice upon the Respondent slightly later than the Tribunal's procedural rules required. The Respondent had been aware of the proceedings as had his wife and his former partners. In the circumstances, upon the application of the Applicant, the Tribunal agreed that the time for the service of such notice might be abridged. No counter-notice had been received.

At the conclusion of the hearing the Tribunal ordered that the Respondent Christopher John William Gauvain of Alderney, Channel Islands, (formerly of Duddleswell, Ashdown Forest, East Sussex) solicitor, be struck off the Roll of Solicitors and they further ordered that he pay the costs of and incidental to the application and enquiry fixed in the sum of £5,128.75 inclusive.

The facts are set out in paragraphs 1 to 22 hereunder:-

1. The Respondent, born in 1940, was admitted as a solicitor in 1967. At the material times he practised in partnership under the style of Dawson Hart at The Old Grammar School, Church Street, Uckfield, East Sussex, TN22 1BH. The Respondent retired from the partnership on or about the 31<sup>st</sup> January 2000. At the time of the hearing the Respondent was not in practice as a solicitor.
2. Following notice duly given an inspection of the books of account of Messrs Dawson Hart was carried out by the Monitoring & Investigation Unit (MIU) of the OSS. The Tribunal had before it a copy of the report of the MIU Officer dated the 13<sup>th</sup> June 2000.
3. The report revealed that the Respondent had been taken seriously ill, entering a diabetic coma, and following this he did not return to the office and formally retired on 31<sup>st</sup> January 2000. During his absence from the office matters came to light which were of concern to the partners and further enquiries showed that client funds had apparently been misused by the Respondent. The funds were misused either by way of direct payments or on behalf of unconnected clients or by improper transfers between unconnected clients.
4. On the 25<sup>th</sup> November 1999, a sum of £25,257.25 had been transferred from office to client bank account in order to rectify the shortage which was known at that date. Further investigation revealed additional shortages totalling £15,257.50 which were rectified on 28<sup>th</sup> April 2000.
5. The partners had asked the Respondent for explanations as to his conduct but his serious ill health prevented him from responding in any meaningful way.

Misuse of Client Funds £40,614.75

6. An examination of the client matter files and relevant client ledger accounts held in respect of the four undernoted clients, showed that client funds amounting to a minimum of £40,614.75 had been misused by the Respondent.

(i)	Mrs M Deceased		£4,500.00
(ii)	Mrs T	(a)	£3,000.00
		(b)	<u>2,050.00</u>
			5,050.00
(iii)	Mr J C		30,300.00
(iv)	Miss C		<u>764.75</u>
			<u>£40,614.75</u>

(i) Mrs M Deceased - £4,500.00

7. The Respondent's firm acted in connection with the estate of Mrs M who died on 26<sup>th</sup> June 1990. Letters of Administration were granted to GD and the Respondent on 19<sup>th</sup> September 1990. The Respondent had conduct of the matter.
8. On 9<sup>th</sup> June 1998, the relevant account in the clients' ledger was charged with an amount of £4,500.00 in respect of a transfer to the client ledger account of Mrs McB, another unconnected client for whom the Respondent acted. The transfer made by the Respondent purported to be a 'loan pending grant of Jersey probate'.
9. An examination of the client ledger account held in respect of Mrs McB showed that the transfer to this account had given rise to a credit balance of £4,500.00. On the same day, amounts of £3,677.50 and £822.50, totalling £4,500.00, were transferred to office bank account by the Respondent in respect of a bill for costs due to the firm.

(ii) Mrs T - £5,050.00(a) £3,000.00

10. The Respondent acted for this client in connection with her affairs generally. On 30<sup>th</sup> July 1998 the Respondent completed a client bank account cheque requisition slip in respect of a payment to be made to Barclays Bank plc in the sum of £3,000.00. The slip was annotated by the Respondent 'EA Tomsett Release from reserve A/C 90082155'. Client bank account was charged with £3,000.00 on 31<sup>st</sup> July 1998.
11. Account number 90082155 at Barclays Bank was held in the name of Mr L Deceased, another unconnected client of the Respondent.

(b) £2,050.00

12. On 4<sup>th</sup> August 1998 Mrs T's client ledger account was charged, inter alia, with an amount of £2,050.00 in respect of a transfer, made at the Respondent's instigation, to the credit of the unconnected client ledger account of Mrs McB. This transfer was described as 're Temporary Loan'.

13. On the same day a payment was made from client bank account on behalf of Mrs McB of three amounts totalling £2,015.54. No evidence was seen to suggest that funds were properly held on client bank account on behalf of Mrs McB at that time, from which those payments could have been made.

(iii) Mr C - £30,300.00

14. The firm acted for Mr C generally and the Respondent had conduct of his matters. On 8<sup>th</sup> January 1996 the Respondent completed a client bank account cheque requisition slip in respect of a payment to be made to Barclays Bank plc in the sum of £12,500.00. The slip was annotated by the Respondent 'Mr C, A/C 90082155'. On 16<sup>th</sup> July 1996 a second slip, relating to £17,800.00, was drawn in by the Respondent and annotated 'Mr C to credit A/C 90082155'. Both client bank account and the relevant client ledger account were charged on 8<sup>th</sup> January and 16<sup>th</sup> July 1996 respectively.
15. Barclays Bank had confirmed that account number 90082155 was held in the name of Mr L Deceased, another unconnected client of the Respondent.
16. Messrs Dawson Hart instructed their chartered accountants to investigate the affairs of the Mr L Deceased Will Trust and to prepare accounts in so far as they were able to due to the inadequate state of the accounts records kept by the Respondent.
17. The accountants prepared a suspense account of unauthorised and/or improper movements of funds into the client ledger of the Will Trust from other unconnected clients which was produced to the Tribunal. There were listed many payments out, which could not be identified, there were payments in from unidentifiable sources, and payments made by way of transfer from the accounts of other unconnected clients.
18. The Accountants had been unable to particularise what direct use was made of the funds improperly transferred from unconnected clients.
19. Messrs Dawson Hart repaid substantial sums which had been misapplied by the Respondent.
20. The OSS wrote to the Respondent on 4<sup>th</sup> October 2000 seeking his observations upon the MIU Report. The Respondent replied as follows:-

“Dear Sir

Your letter dated 4<sup>th</sup> October Report dated 13 June

I request, please, an extension of time for replying to your letter. I am back home after admission to Princess Royal Hospital, Haywards Heath on September 17<sup>th</sup>, the first 7 days in intensive care. It has set back recovery from the underlying condition and illness which left me in hospital for 5 months between October 1999 and March 2000.

I have not been able to drive since October 1999 and need accompanying if leaving house. I must take advice in order to reply to the letter and travelling to and back from any of the practitioners, on SAS list, will be difficult - Tunbridge Wells and Brighton not be appropriate. It is also necessary to see my consultant physician before keeping that appointment and the consultant cannot see me until the end of October.

Thank you for the clarity of your letter. If further information is needed to deal with the request please advise. The telephone number is .....but BT has yet to restore our line damaged in the recent bad weather.

Yours faithfully

C J W Gauvain”.

21. Nothing further had been heard from the Respondent but his wife wrote to the OSS on 29<sup>th</sup> March 2001 enclosing a medical report in respect of the Respondent, a copy of which was before the Tribunal.
22. No criticism of the Respondent’s former partners was made. In a letter addressed by those former partners to the OSS dated 6<sup>th</sup> September 2000 they said:-

“Mr Gauvain had been a partner in this firm for 30 years. Everyone considered him to be an entirely upright, honest person and indeed of an over-conscientious nature. He had, and continues to enjoy, immense support and sympathy from his long-established clients. It simply never entered our heads that he was capable of such conduct. We do not consider that it would be required in a smallish firm for every senior partner’s actions to be checked. Further Mr Gauvain had a number of Powers of Attorney in his favour and was able to deal under those outside office accounts. It was this that enabled him to make the illegal transfers which came to light on the second discovery. We questioned our cashier as to why he never alerted anyone to the temporary loans. He pointed out that he relied implicitly on Mr Gauvain as a senior partner, that many of his clients and Trusts were in fact inter-related and transfers could be properly explained, and that on every occasion he received proper paperwork authorising transfers between clients and therefore he had no cause to suspect anything was untoward. So the short answer to your question is that the firm placed implicit trust in Mr Gauvain as a senior partner of 30 years standing and that we were totally devastated by the discoveries we made of his wrongdoing.”

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

23. The Respondent had not responded in detail to enquiry made of him by the OSS. The Respondent had in fact instructed a solicitor experienced in dealing with matters before the Tribunal but he had not continued with such instructions.
24. The Applicant wished to make it clear that he made no criticism of the Respondent’s former firm or his former partners. The subject matter supporting the allegations

represented conduct on the part of the Respondent of which his former partners were not aware and whose suspicions were not aroused.

25. The Respondent had not been confronted or pressed to deal with enquiries about his behaviour owing to his serious ill-health.
26. The partners in the Respondent's former firm had replaced all missing monies.
27. The Respondent had been a partner in the firm for some 30 years and specialised in probate and trusts. The firm had considered him to be conscientious and believed that sometimes he over-burdened himself with work. The Respondent's health had deteriorated in 1999. The Respondent's partners had always believed him to be a man of the utmost integrity and diligence and they believed that his concentration had suffered owing to his serious ill-health. The Applicant told the Tribunal that despite the Respondent's serious ill-health, he had to call into question his probity.
28. The Respondent had misused clients' funds totalling £40,614.75. The MIU Officer had set out specific cases and had also given examples. The Respondent had caused monies to be transferred from one client ledger to the client ledger of another unconnected client. Monies had been paid in and out of the account relating to the late Mr L which were not capable of identification.
29. The Applicant put the matter as a very serious case of conduct unbecoming a solicitor. There had been a widescale misuse of clients' funds. In one instance client money had been used to pay the costs of another unrelated client. The Respondent's former partners had had to pay back substantial sums of money to prevent loss to clients. The Applicant did allege that the Respondent had been dishonest. The Respondent had offered no explanation for his actions. The conduct before the Tribunal had taken place throughout a period of time when the Respondent had been in practice as a solicitor. Some of his activities went back as far as 1995. Some of the instances of misconduct occurred before the Respondent's sudden deterioration in his health.

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

30. The Respondent did not make any formal submissions but the Tribunal did note the esteem in which the Respondent had been held by his former partners and the serious health problems suffered by the Respondent.

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

31. The Tribunal found both of the allegations made against the Respondent to have been substantiated.
32. The Tribunal was completely satisfied by the MIU Officer's Report and the accounts prepared by the accountants acting for the Respondent's former partners that there had been a number of misapplications of clients' money. Such misapplications had been going on over a long period of time and had begun to occur before the serious deterioration in the Respondent's health.

33. The Tribunal noted that it was the opinion of the Respondent's former partners that his ill-health had led to a loss of concentration on his part. The Tribunal had no formal medical evidence to the effect that the Respondent's ill-health affected him to such an extent that he did not know that what he was doing was wrong.
34. It appeared to the Tribunal that the Respondent deliberately used monies belonging to one client for the purposes of another unconnected client and notes in particular that on one occasion the improperly transferred money was used to settle an outstanding bill of costs due to the firm.
35. It is very clear to the Tribunal that the Respondent failed to act with the probity, integrity and trustworthiness required of a member of the solicitors' profession and he failed to fulfil one of the most important functions of a solicitor which is to exercise a proper stewardship over clients' funds.
36. The matter has been put before the Tribunal by the Applicant as one in which the Tribunal should make a finding of dishonesty against the Respondent. In considering the question of dishonesty, the Tribunal notes that the allegations made against the Respondent not only described his behaviour as a breach of the statutory rules, but also stated that he had made improper transfers. It is clear from the allegations made against the Respondent that impropriety had been alleged against him. There is no doubt that an allegation made against the Respondent is one of conscious impropriety which is synonymous with dishonesty.
37. In considering the question of dishonesty, the Tribunal has relied upon the test in the case of *Twinsectra v. Yardley*. There is no doubt in the Tribunal's mind that an honest solicitor would not have behaved as the Respondent did and the Tribunal considers that a solicitor of long standing having particular experience in the fields of probate and trusts knew the seriousness of what he was doing and that what he was doing was wrong. The Tribunal finds that the Respondent's actions were dishonest.
38. Having made such Finding and mindful of its duty to protect the public and the good reputation of the solicitors' profession, the Tribunal ordered that the Respondent be struck off the Roll of Solicitors and it further ordered him to pay the costs of and incidental to the application and enquiry in an inclusive fixed sum.

DATED this 18th day of March 2003  
on behalf of the Tribunal

Miss T Cullen  
Chairman