

IN THE MATTER OF STANLEY DARLINGTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr P Kempster
Mr J Jackson

Date of Hearing: 6th February 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 Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on 30th August 2002 that Stanley Darlington of Maidenhead, Berkshire, 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 particulars namely that he had:-

- (a) transferred funds from client account to office account in breach of Rule 19 and Rule 22 of the Solicitors' Accounts Rules 1998. (The wording of this allegation amends an error in the drafting of allegation (a) in the Applicant's statement, the Respondent having accepted that he understood the precise nature of the allegation);
- (b) rendered bills of costs that he knew or ought to have known were excessive and/or improper.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX 1BL appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the oral evidence of Mr Cotter, Mr Shelley, Mrs Darlington and the Respondent, who denied the allegations.

At the conclusion of the hearing the Tribunal made the following order.

The Tribunal order that the Respondent, Stanley Darlington of Eastcote, Pinner, Middlesex (formerly of Maidenhead, Berkshire) solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,816.54.

The facts are set out in paragraphs 1 to 28 hereunder: -

1. The Respondent, born in 1931, was admitted as a solicitor in 1955. At the material times the Respondent carried on practice on his own account under the style of S Darlington at 191A Field End Road, Eastcote, Pinner, Middlesex, HA5 1QX. On 22nd April 2002 the OSS resolved to intervene into the Respondent's practice.
2. Following due notice to the Respondent a Forensic Investigation Accountant of the OSS carried out an inspection of the Respondent's books of account. The inspection began on 26th November 2001. The Forensic Investigation Accountant produced a Report dated 26th March 2001 which was before the Tribunal.
3. The Report revealed that there was a cash shortage on client account as at 31st October 2001. By 5th November 2001 £325.50 of the shortage had been replaced by receipt of funds from the client concerned. The cash shortage had arisen in the following way:-

Cause of the Cash Shortage - £665.93

(i)	Debit balance re A (replaced 5.11.01	£352.50
(ii)	Debit balance re S	<u>30</u>
		£352.80
(iii)	Two unallocated transfers from client to office bank account totalling	283.13
(iv)	Bank charges debited to client bank account	<u>30.00</u>
		<u>£665.93</u>

4. The Forensic Investigation Accountant expressed concern about the Respondent's costs in connection with the Estate of the late Mrs L.
5. Mrs. L died on 23rd December 1999. By her Will dated 9th May 1998 she appointed Mrs C and the Respondent joint executors.
6. In a client care letter to Mrs C dated 11th January 2000, the Respondent suggested that only one executor apply for probate in order to speed up the process and to save on

expense. On 29th September 2001 probate was granted to the Respondent alone with power reserved to Mrs C.

7. The estate was valued for probate at £261,046 gross and £259,034 net.
8. The main asset in the estate was Mrs L's residence and the balance of the estate was principally a portfolio of shares.
9. The Will listed five pecuniary legacies totalling £6,000 and ten specific legacies.
10. The residue was to be divided in varying proportions between nine people including Mrs C.
11. In reviewing the client ledger card and client files in connection with the estate of the late Mrs L, the Forensic Investigation Accountant noted that the costs charged to the estate by the Respondent appeared to be excessive. An analysis of the ledger cards showed that in the period from 10th February 2001 to 21st November 2001 the Respondent received amounts totalling £247,843.97 on behalf of the estate. In the same period the ledger showed disbursements totalling £8,399.54, distributions to beneficiaries totalling £193,480 and the transfer of funds from client to office bank account in respect of costs and disbursements of £39,075.50 including VAT, leaving a balance of £6,876.93 held by the Respondent.
12. The Forensic Investigation Accountant pointed out to the Respondent that his bills were in the region of £40,000. The Respondent indicated that he believed he could justify that level of billing.
13. The Forensic Investigation Accountant served the Respondent with a Notice under Section 44B of The Solicitors Act 1974 (as amended) in respect of the files relating to the work undertaken in connection with the estate of the late Mrs L. Mr Shelley, a law costs draughtsman, was asked to give an opinion as to the level of costs that could reasonably be charged in this matter.
14. It was Mr Shelley's opinion that:-

"The margin of overcharging is so great that, in my opinion, it is impossible that it could have occurred solely by mistake or oversight, my opinion being reinforced because the solicitor seemingly monitored the work done and was fully aware of the amounts previously charged."
15. Mr Shelley's view was that a maximum proper charge would have been £13,600: The Respondent's charges (net of VAT) were £35,510. Mr Shelley pointed out that the Respondent's excessive charge was £21,910 or 161% of the maximum proper charge.
16. The Respondent had costed the file to 4th July 2001 arriving at a net total cost of £10,059.75. The Respondent's workings showed that he had net billings of £25,610 against the estate as at 4th July 2001. There had been an "over billing" of £15,550.25 as at 4th July 2001, but the Respondent subsequently raised a further seven bills totalling £9,100 net. The Respondent indicated to the Forensic Investigation Accountant that his billing reflected both work done and to be done. The Respondent

confirmed in his oral evidence that there had been billing in anticipation of and in advance of work to be undertaken.

17. The Respondent saw nothing wrong in this. His view was supported he said, by an affidavit of Malcolm Eric Dean Turner, a solicitor with thirty years experience of Probate work who deposed:-
- "It is my understanding that if after rendering an interim bill or a final bill to include the preparation of estate accounts during the administration of a deceased's estate it is later ascertained that the interim or final bills prove to have been excessive then a repayment to the deceased's estate should then be made with interest at the prescribed rate in respect of the period covered by the overpayment."
18. The Respondent had drawn twenty seven bills. Mrs. C, the executor with power reserved, had received eight of them totalling £14,346,75.
19. The Respondent said he had not consciously not sent the bills to Mrs C. He did, however, consider that it was an unnecessary step as he was the sole proving executor. A review of the estate file showed that with bills numbered 3,4,5,8,10,13,14,16,17 and 18 there was a copy letter on file addressed to Mrs C "enclosing the bill." Mrs C had confirmed that she did not receive either the original of the letters or the bills.
20. The Respondent when discussing the matter with the Forensic Investigation Accountant said that he recognised that the billing was high and he needed to put some back. He indicated that he would raise funds from his family or by the sale of his house.
21. In evidence, the Respondent said that his profit for his previous financial year had been only £1,000. He ran his practice with the assistance of a modest overdraft facility from his bank. At the time of the Forensic Investigation Accountant's visit the overdraft was below the agreed limited.
22. The pattern of billing in the L deceased estate had been as follows:-

	<u>Date</u>	<u>Bill No.</u>	<u>Net</u>
		£	£
1.	10.02.00	4877	520.00
2.	02.03.00	4884	1,100.00
3.	07.03.00	4888	250.00
4.	30.03.00	4898	500.00
5.	10.08.00	4943	70.00
6.	06.10.00	4960	420.00
7.	19.10.00	4962	1,020.00
8.	23.10.00	4965	5,000.00
9.	08.11.00	4968	650.00
10.	17.11.00	4972	1,100.00
11.	11.12.00	4982	5,200.00
12.	09.01.01	4989	800.00
13.	24.01.00	4992	1,000.00

14.	14.02.01	5001	600.00
15.	23.04.01	5025	2,500.00
16.	09.05.01	5029	400.00
17.	21.05.01	5038	700.00
18.	25.05.01	5041	2,000.00
19.	21.06.01	5048	700.00
20.	28.06.01	5053	1,880.00
21.	30.07.01	5066	1,500.00
22.	03.09.01	5081	2,050.00
23.	26.09.01	5089	1,500.00
24.	31.10.01	5099	800.00
25.	16.11.01	6012	1,000.00
26.	07.12.01	6013	1,000.00
27.	20.12.01	6017	1,250.00

23. Mrs C received bills numbered 1,2,6,7,9,12,13 and 16.
24. The Respondent had also acted in the Estate of Mrs M deceased. Mrs M had died on 12th September 1998. In her Will she appointed Ms S, Ms M and the Respondent as executors. A grant of probate was obtained on 5th November 1998 naming the Respondent as sole proving executor with power reserved to others.
25. The Respondent delivered a bill to himself as executor dated 23rd March 1999. The bill was for £6,900 net of VAT. It became subject of an application for a remuneration certificate.
26. A provisional assessment dated 17th May 2000 reduced the fee to £2,950.
27. The Respondent appealed that provisional assessment and the Remuneration Certifying Appeals Committee reviewed and amended the assessment on 4th August 2000 to £3,500 net.
28. In evidence the Respondent said the Costs Judge "savaged his bill." The Respondent's own costs draughtsman had told the Costs Judge that the Respondent's timing records were immaculate. The costs draughtsman's calculation brought the bill to a figure £20 higher than that calculated by the Respondent. The Costs Judge had substituted a different lower hourly rate. The final figure assessed by the Costs Judge was £4,377 exclusive of VAT and disbursements. In the light of that figure it was clear that The Law Society had grossly under assessed the Respondent's costs.

The Submissions of the Applicant

29. The Applicant put the matter as a serious one.
30. It was the evidence of Mr Shelley, the costs draughtsman giving expert evidence, that the Respondent ought to have known that his charges in the matter of the late Mrs L deceased were excessive. It was the Applicant's position that the Respondent did know that he had been overcharging. There was at Appendix E to the Forensic Investigation Accountant's Report a copy of the Respondent's own handwritten calculations in which he had calculated exactly what his charges ought to be. In the

light of his calculations the actual billing demonstrated an advertent high level of over billing.

31. The reality was that the Respondent had utilised client funds to fund his own practice. The monies taken from the Estate of the late Mrs L had maintained the Respondent's firm and had enabled him to continue to practise.

The Submissions of the Respondent

32. The Respondent assured the Tribunal that he had not been consciously or intentionally dishonest. He accepted that he had billed for work to be done in advance. He pointed out that in the case of the late Mrs L the solicitors taking over the conduct of the matter had confirmed by their letter of 3rd February 2003 that the Estate was still in the course of administration.
33. It was the submission of the Respondent that it was perfectly acceptable to operate a system of interim billing and if at the end of the administration when the correct amount of fees is established to pay back any overcharge which had come to light together with interest. The Respondent accepted that his interim bills did not always bear any narrative but he knew there was much work still to be done and, indeed, the administration might go on for another year. The Respondent's whole approach in an Estate of the size of that of Mrs L was that there were "swings and roundabouts" and at the end of the administration his charges would have been justified. Because of The Law Society's intervention into his practice there was now no telling how the matter would have come out. It remained the Respondent's belief that he would have justified the charges.
34. As a result of The Law Society's intervention into the Respondent's practice, everyone was worse off. The intervention had not served to protect the interest of clients.
35. The Respondent complained about the behaviour of the Forensic Investigation Accountant when inspecting the books of account. The Respondent also complained about the behaviour of the intervention agents.
36. The Respondent had lost his livelihood and was having to sell his home. He had to continue paying his office rent and business rates despite the fact that his practice no longer existed. The matter had been a great strain on the Respondent and his wife.
37. The Respondent had almost 50 years in practice as a solicitor. There had never been any suggestion that he had had "his finger in the till." The Respondent's client account always balanced to the last penny.
38. The Respondent pointed out that if he had intended any dishonesty in the matter of the late Mrs L he would have removed any potentially incriminating documents from his file. The file was transparent as to what had happened which spoke of the Respondent's honesty.
39. The Law Society's intervention into the Respondent's practice had been in itself a severe punishment.

40. The Respondent accepted that he had delivered bills wherever possible because of the low profitability of his firm and the fact that his figures had been worse than they had ever been in the past. He said it was right that he had "knocked" the file of the late Mrs L more than any other.
41. When asked if he did not consider that he had been taking monies from the estate of Mrs L in respect of bills for future work, as in effect monies on account of costs, the Respondent said he could not have done that since he was well aware that such monies had to be held in client account.
42. He had believed and continued to believe that his charges had been justified and would at the conclusion of the matter prove to be justifiable.
43. The Tribunal was invited to give due weight to the written testimonials put in in support of the Respondent which spoke of his competence and integrity.

The Findings of the Tribunal

44. The Tribunal found both of the allegations to have been substantiated. With regard to allegation (a) the Tribunal consider that the errors leading to the breaches of the Solicitors' Accounts Rules were in reality de minimis.
45. With regard to allegation (b) the Tribunal finds that the Respondent rendered bills for costs that he knew were excessive and improper. As a result the Tribunal does find that the Respondent did act with conscious impropriety.
46. On 1st March 2001 the Tribunal found the following allegations to have substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that:-
 - i) contrary to Section 1 of the Solicitors Act 1974, he acted as a solicitor whilst not being in possession of a practising certificate issued by the Law Society, pursuant to Section 10 of that Act;
 - ii) he failed duly to deliver an accountant's report in accordance with Section 34 of the Solicitors Act and the Rules made thereunder;
 - iii) he practised in breach of a condition imposed upon his practising certificate.
47. In its Findings dated 3rd May 2001 the Tribunal said:-

“The Tribunal found allegations (i) and (ii) to have been substantiated, indeed they were not contested.

The Tribunal found allegation (iii) to have been substantiated. It was clear that the Law Society had imposed a condition upon the respondent's practising certificate. That condition had not been removed until the Respondent's successful petition to the Master of the Rolls some nine months later.

The Respondent had continued to practise as a sole principal during the period running from the imposition of the condition until it was removed by the Master of the Rolls.

The Master of the Rolls had pointed out how difficult it was for a man of the Respondent's age to gain employment. He also pointed out that he was satisfied from the evidence before him that the respondent was not a danger to the public and had properly looked after his clients affairs.

Prior to the hearing of the petition to the Master of the Rolls, the Respondent had put his house in order so far as outstanding regulatory matters were concerned. The Master of the Rolls took all that into account and decided that he would remove the condition placed by the Law Society, on the respondent's practising certificate. The Master of the Rolls deprecated the respondent's previous history of failure punctiliously to comply with the Law Society's regulatory requirements. He said he would give the respondent 'one last chance'; the Master of the Rolls gave no indication that the removal of the condition from the Respondent's practising certificate was to have retrospective effect.

It is the Tribunal's view that the condition was removed on the 20th October 2000 and up to that date the Respondent continued to practise as a sole practitioner and had been in breach of the condition. The Tribunal accepts that the removal of the condition by the Master of the Rolls served to mitigate what otherwise would have been an extremely serious breach.

A profession can only be self regulating with the consent and compliance of its members. The credibility of the Law Society as a competent and effective regulator looking after the interests of the public was undermined if solicitors did not punctiliously comply with those requirements. The Tribunal accept that the Respondent's regulatory failures were not at the most serious end of the scale, but they were nevertheless breaches, which could not be ignored. Clearly they were not accidental. In all of the circumstances, the Tribunal considered it right to impose a financial penalty upon the Respondent and further ordered him to pay the applicant's fixed costs."

48. On 6th February 2003 the Tribunal has made a Finding that the Respondent has acted with conscious impropriety. In making such a Finding the Tribunal has applied the tests in *Royal Brunei Airlines v Tan* and *Twinsectra v Yardley*. The Tribunal believed that an honest solicitor would not have behaved in the way that the Respondent did behave and they find that he knew that what he was doing was wrong.
49. The Tribunal rejects the submission that it is acceptable to deliver bills in advance of work completed. The Solicitors Accounts Rules provide that where payment is taken by a solicitor on account of costs that money is to be treated as client money and retained in client account. It is thereafter properly transferable to office account only upon delivery of a bill for work completed. Billing in advance for work to be done (save perhaps in specific cases such as conveyancing matters where a final bill including the cost of completion is for practicable reasons delivered in advance of completion although even in such a case payment is not made until completion)

would serve to undermine the clear provision that monies paid in advance of work done, i.e. on account of costs, are to be regarded as client monies.

50. The Tribunal finds that the Respondent drew bills as a mechanism for transferring client monies to office account to bolster his failing practice. The Tribunal had before it the Respondent's hand written calculations as to his costs which appeared on the face of it to demonstrate a reasoned and reasonable figure. He had taken costs over and above that figure and in particular had in May of 2001 made three transfers (apparently against bills) totalling £3,100. In September 2001 had transferred monies in respect of two bills totalling £3,550. In October 2000 had transferred £6,440 against three bills (all such sums exclusive of VAT). Whereas a monthly interim bill might be acceptable, the Tribunal considers it very unlikely that circumstances could arise where it would be appropriate to deliver three interim bills in one calendar month. The reality was that the Respondent had used clients' money for his own purposes and the transfers made had been "dressed up" to look as if they were legitimate transfers.
51. Such behaviour on the part of the Respondent served seriously to damage the good reputation of the solicitors' profession and in order to protect the interests of the public it was right that the Respondent should be struck off the Roll of Solicitors. The Tribunal further ordered that he should pay the costs of and incidental to the application and enquiry in a fixed sum.

DATED this 19th day of March 2003
on behalf of the Tribunal

P Kempster
Signed on behalf of the Chairman