

IN THE MATTER OF GARETH WYN THOMAS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J P Davies (in the chair)

Mr. I R Woolfe

Mr. D E Marlow

Date of Hearing: 17th December 2002

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 Rosemary Jane Rollason, solicitor and partner in the firm of Field Fisher Waterhouse of 35 Vine Street, London, EC3N 2AA on 9th September 2002 that Gareth Wyn Thomas of Dollis Hill Lane, London, 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.

During the course of the hearing the Applicant sought to withdraw certain of the allegations. The Respondent agreed and the Tribunal consented.

The allegations are set out below in the agreed form. The allegations were contained both in the statement which accompanied the application and in a supplementary statement dated 12th November 2002.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that at an inspection of the books of account at his firm Charles Robinson & Son commenced on 4th September 2001 it was found that:-

- (i) the books of account contained numerous errors and mispostings and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (ii) comparisons of liabilities to clients with cash available at various dates between May 2000 and June 2001 showed the existence of shortages and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (iii) a suspense ledger ("PA8000") within the clients' ledger showed numerous debit entries totalling £49,377.95 which had not been allocated to specific client ledgers and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (iv) the suspense ledger ("PA8000") within the clients' ledger recorded numerous credit entries totalling £24,665.75 which has not been allocated to specific client ledgers and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (v) a minimum cash shortage of £10,557.75 existed and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (vi) improper transfers totalling £7,895.03 had been made from client to office bank account in the matter of Mr M deceased and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;
- (vii) [withdrawn]
- (viii) an overpayment of £2,000 was found to exist in respect of the sale and leaseback of the Respondent's office premises which remained uncorrected for some 3 years and the Respondent had therefore failed to comply with the Solicitors Accounts Rules;

and he had been guilty of conduct unbecoming a solicitor in that:-

- (ix) between approximately 1992 and 1993 he misled the complainant Mr H as to the progress of Mr H's application to the Legal Aid Board;
- (x) between October 1997 and January 1998 he misled an advisor from the Chelsea Citizens Advice Bureau in the course of her enquiries concerning the progress of Mr H's application for legal aid.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 17th December 2002 when Rosemary Jane Rollason, solicitor and partner in the firm of Field Fisher Waterhouse of 35 Vine Street, London, EC3N 2AA appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent as to the facts and the allegations.

At the conclusion of the hearing the Tribunal ordered that the Respondent Gareth Wyn Thomas of Dollis Hill Lane, London, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 17th day of December 2002 and they further ordered that he do pay 75% of the costs of and incidental to the application and enquiry (to include

the costs of the Investigation Accountant) which had been agreed in the total figure of £19,517.27.

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

1. The Respondent, born in 1935, was admitted to the Roll of Solicitors in 1961.
2. From October 1997 to 30th September 2000 the Respondent carried on practice in partnership with Mr PJM under the style of Charles Robinson & Son. From 1st October 2000 Mr PJM retired as a partner and thereafter worked as a consultant with the firm. The Respondent continued to practise alone as Charles Robinson & Son at 42 Lampton Road, Hounslow, Middlesex, TW3 1JN.
3. The Law Society resolved to intervene into the Respondent's practice on 4th March 2002; the intervention had taken place.
4. An inspection of the Respondent's books of account was conducted by The Law Society's Investigation Officer (the "IO"). The inspection began on 4th September 2002. The IO's report dated 28th January 2002 was before the Tribunal.
5. The report revealed that the books of account were not in compliance with the Solicitors Account Rules. The Respondent agreed that his books showed the differences identified upon inspection and also agreed the position found as at 31st July 2001 but contended that this was not the true position as book-keeping errors had occurred. In view of her findings, the IO could place no reliance on the books of account and was not able to express an opinion as to whether funds held on clients' bank and building society accounts were sufficient to cover the Respondent's liabilities to clients.
6. The IO's report recorded that the books were found to contain numerous errors and mispostings.
7. Since 31st May 2000 the comparisons of liabilities to clients with cash available at various dates had shown differences (shortages) as follows:-

31 st May 2002	£115,193
30 th September 2000	£66,006
26 th February 2001	£88,611
31 st July 2001	£44,915

8. Within the clients' ledgers there existed a suspense ledger headed "Partners PA8000". An analysis of that ledger revealed the existence of numerous debit entries totalling £49,377.95 which had not been allocated to specific client ledgers. The earliest such entry was 30th September 1997.
9. The suspense ledger ("PA8000") also recorded numerous credit entries totalling £24,665.73 which had not been allocated to specific client ledgers. The earliest such entry was 30th April 1997.

10. The IO ascertained that a minimum shortage existed in relation to the following matters:-

C deceased	£3,150.01
P	£3,000.00
M	£2,407.73
Total	£8,557.74
Sale and leaseback of office premises	£2,000.00

Total	£10,557.74
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11. The minimum cash shortage was rectified by the Respondent who confirmed that on 14th December 2001 he had transferred an amount of £10,557.74 from office to client bank account.
12. The Respondent dealt with the estate of M Deceased who died on 23rd December 1995 intestate.
13. The estate accounts included costs, VAT and disbursements amounting to £1,639. The relevant ledger account recorded eighteen transfers from client to office bank account between 25th January 1996 and August 2001 totalling £9,534.03.
14. The Respondent agreed that the personal representative, Mrs C, had not been aware of the amounts he had transferred to his office account in excess of the £1,320 shown in the estate accounts.
15. Further receipts had been recorded on the ledger account as received from Pearl Assurance. These were the sums of £4,228.86 on 30th April 1996 and £6,443.29 on 20th November 1996. In neither case did the matter file or ledger account record any payments being made to the beneficiaries in respect of these funds.
16. Following the first receipt, when writing to the beneficiaries, the Respondent told them there had been a late additional receipt from Pearl Assurance and that he would “prepare a supplementary distribution account and send the additional sum due”. He had not done so.
17. In respect of the second receipt, the Respondent wrote to the personal representative on 4th November 1996 enclosing a form from Pearl Assurance requiring her signature. There was no further correspondence with any of the beneficiaries on the file after this date.
18. The Respondent confirmed to the IO that neither of the receipts had been paid to the beneficiaries. He said the file had inadvertently been put away before completion.
19. The Respondent had agreed with the IO to pay the resultant shortage, but had said he would not be able to do so immediately and hoped to do so within five weeks.
20. The IO’s report records that in July 1998 the then partners in the firm had entered into an agreement to sell and leaseback their office premises. They acted as their own

solicitors and used the client bank account. The report set out a summary of transactions on the suspense ledger, Partners PA8000, which was used for this purpose. There was an overpayment of £2,000 which had remained uncorrected for some three years until corrected by the Respondent on 14th December 2001.

21. In approximately April 1992 Mr H instructed the Respondent to act for him in a dispute about monies he claimed he was due to receive from the estate of the late Mrs K who died intestate on 9th March 1992 in Monaco where she and Mr H were at the time resident.
22. At a meeting with Mr H the Respondent partially completed a Legal Aid application form on behalf of Mr H. The form was signed but not dated by Mr H. It was not fully completed. The Respondent did not sign the form. Later the Respondent provided Mr H with a copy of the Legal Aid booklet "What Happens Next?" The Respondent never submitted the Legal Aid application to the Legal Aid Board.
23. Mr H made repeated telephone calls during 1992 and 1993 to enquire of the Respondent as to the progress of his application. The Respondent told him that a reply from the Legal Aid Board had not yet been received.
24. In October 1997 Mr H instructed another firm to act for him. He remained concerned to know the outcome of his Legal Aid application.
25. In October 1997 Mr H consulted the Chelsea Citizens Advice Bureau ("CCAB"). A CCAB representative telephoned the Respondent on 23rd October 1997 and was informed that Mr H's Legal Aid application had been unsuccessful.
26. Following the telephone conversation the CCAB representative wrote to the Respondent the same day seeking confirmation. The Respondent did not respond to this letter.
27. On 15th December 1997 the CCAB representative wrote a further letter to the Respondent to chase the matter. The Respondent replied by letter dated 7th January 1998 in which he stated:-

"We find on reviewing our papers in respect of Mr H's proposed scheme that we did not, in fact, proceed with the application for legal aid as we formed the opinion that the low prospect of success and the modest sum involved would have led to the Legal Aid Board rejecting an application.

We are very mindful that we do not appear to have advised Mr H of that view and we would gladly see him again concerning the matter free of charge."
28. In response to a letter addressed to him by the OSS, the Respondent said in his letter of 24th September 2001:-

"I accept that I did not submit a Legal Aid application, and that I misled Mr H in this respect. How this came about I cannot remember".

The submissions of the Applicant

29. The breaches of the Solicitors Accounts Rules were serious. Compliance with those Rules was of fundamental importance in the regulation of the solicitors' profession. The proper accounting for, administration of and handling of clients' monies was vital for the maintenance of the public's confidence in the solicitors' profession. The Respondent had fallen very far short of the high standards required of him in the handling of clients' monies and the maintenance of proper books in accordance with the Solicitors Accounts Rules.
30. The Respondent had admitted misleading his lay client, Mr H, and a representative of the Citizens Advice Bureau. It was a serious matter to mislead a client about the progress of a case. The Respondent had offered three different explanations on three separate occasions. The client was an elderly gentleman who had been caused anxiety and stress over several years. Such behaviour brings the whole of the solicitors' profession into disrepute.
31. Such behaviour amounted to a breach of Solicitors Practice Rule 1, namely that:-
- “A solicitor shall not do anything in the course of practising as a solicitor ... which compromises or impairs, or is likely to compromise or impair ...
- a) the solicitor's independence or integrity
 - b) ...
 - c) the solicitor's duty to act in the best interests of the client;
 - d) the good repute of the solicitor or of the solicitors' profession;
 - e) the solicitor's proper standard of work....”

The submissions of the Respondent

32. The Respondent had responded to the OSS by letters of some length and he had made a written statement which had been placed before the Tribunal and could be summarised as follows.
33. With regard to allegation (vi), the Respondent indicated that it was he himself, sometimes aided by a part-time book-keeper, who dealt with transfers from client to office bank accounts. There were three client current accounts and two office accounts which made the process a little complex. It was done once or twice a month and invariably the Respondent suffered frequent interruptions from telephone calls, members of staff and sometimes callers at the office.
34. When Mr M died there were three fee earners, apart from the Respondent, and about 750 ledgers with balances. The Respondent would print out a list of all the balances, mark those where there was a clear available balance for transfer and at the same time prepare a list for each fee earner of cases where possibly a bill could be submitted. The listings did not disclose whether bills had been rendered nor how old balances were.
35. The Respondent accepted that he clearly was in breach of the Rules in the case of M Deceased due to his mislaying the file and then putting in bills without bothering to

check that they were due. Being without the file he did not submit them to the client beforehand. None of the seven beneficiaries asked about progress although the Respondent had carefully notified them that there was a balance due to them. The personal representative was seeing the Respondent regularly about another matter, but never asked about the estate.

36. The firm's accountants and auditors at least annually took a print-out of all open ledger sheets but did not draw the Respondent's attention to Mr M's sheet. Having mislaid the file, the Respondent failed to print the sheet.
37. The Respondent did not have a clear memory of how he came to make the errors. He had been overburdened with work. He must have failed to check and assumed the balance included unsubmitted bills.
38. The Respondent's error would very probably not have arisen had he observed the Rules, but there had been a chapter of coincidences – his overwork, the client and the beneficiaries' failure to make enquiry, the file having been mislaid and the firm's accountants not having spotted the error. The Respondent had been unaware of the problem.
39. With regard to the matter of Mr H, the Respondent differed from Mr H in some of the details, but he did not challenge the allegation. The allegations were in respect of a case which was about nine or ten years old and it was some six years after the event that the OSS had first raised the matter with the Respondent.
40. The case had been dismissed by the OSS and reopened only after the involvement of the Legal Services Ombudsman.
41. The Respondent did not believe that there was an actual shortage on client account. The Respondent had not been able to prove that he was right. The minimum shortage ascertained by the IO was attributable to incorrect postings.
42. On a number of occasions he paid items such as Counsel's fees, stamp duty and Land Registry fees out of office or nominal accounts when there appeared to be no funds in the relevant client account due to book-keeping posting errors. If a client account debit appeared which he could not understand he had paid the monies from office or his personal account. The effect in each case would be to perpetuate or increase the excess balance in clients' bank account and on clients' ledgers.
43. It remained the Respondent's belief that the case of M Deceased was the only matter in which money was improperly taken from a client ledger. That was due to an error and the position had been rectified.
44. The Respondent had suffered considerably from a financial point of view. The Respondent had not been able to take a holiday for some five years and his practice had ceased to be profitable.
45. At the time of the hearing the Respondent's current financial liabilities amounted to some £300,000. He owned a house which he was trying to sell. He had made

provision for a modest pension with a provider that was currently suffering considerable difficulties.

46. The Respondent agreed the figures for costs put forward by the Applicant.

The Findings of the Tribunal

47. The Respondent had been guilty of serious shortcomings in relation to his compliance with the Solicitors Accounts Rules. He was solely responsible for compliance with those Rules and the exercise of a proper stewardship over clients' money. The Respondent had utilised clients' money for his own purposes, although dishonesty had not been alleged against him and the Tribunal accepted the Respondent's explanation that such position had arisen as a result of error rather than any deliberate intention.
48. It was clear that Mr H and a representative of the CAB had been misled by the Respondent. That was a serious matter which could not be overlooked.
49. The Tribunal concluded that the Respondent was not fit to practise as a solicitor and it was in the interests of the protection of the public and the protection of the good reputation of the solicitors' profession that he should be suspended from practice for an indefinite period of time.
50. In view of the fact that the Applicant did not pursue the most serious allegations of dishonesty against the Respondent, the Tribunal considered it right that the Respondent should not be ordered to pay the whole of the costs of and incidental to the application and enquiry. The subject matter relating to the dishonesty allegations was no different from that in support of the other allegations. Additionally the Applicant had not received any response from the Respondent in connection with the allegations made against him until shortly before the hearing. In all of the circumstances, the Tribunal considered it right to order the Respondent to pay 75% of the costs which had been agreed in the total figure of £19,517.27 (to include the costs of the Investigation Officer of The Law Society, VAT and disbursements).

DATED the 6th day of February 2003
on behalf of the Tribunal

J P Davies
Chairman