

IN THE MATTER OF GWILYM RICHARD JENKINS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W M Hartley (in the chair)
Mr. A Gaynor-Smith
Mrs. V Murray-Chandra

Date of Hearing: 25th March 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 25th October 2002 that Gwilym Richard Jenkins solicitor of Village Farm Estate, Bridgend, 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 fit.

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

- (a) That he failed to keep his books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;
- (b) That he failed promptly to remedy breaches of the Solicitors Accounts Rules contrary to Rule 7 of the Solicitors Accounts Rules 1998;
- (c) That he utilised clients' funds for the purposes of other clients;

- (d) That he failed to deliver or delivered late his Accountant's Reports notwithstanding Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors Accounts Rules 1998;
- (e) That he failed promptly or at all to comply with a professional undertaking;
- (f) That he improperly delayed in the conduct of professional business;
- (g) That he utilised clients' funds for his own purposes;
- (h) That he attempted to or did mislead a building society;
- (i) [Withdrawn with the consent of the Tribunal;]
- (j) That he failed to exercise proper supervision of his staff.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 25th March 2003 when Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Mr R B Sage, Investigation and Compliance Officer.

The Applicant gave evidence as to service of the relevant documents and the Tribunal was satisfied that they had been duly served.

At the conclusion of the hearing the Tribunal ordered that the Respondent Gwilym Richard Jenkins of Village Farm Estate, Bridgend, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £6,395.86.

The facts are set out in paragraphs 1 to 37 hereunder: -

1. The Respondent, born in 1951, was admitted as a solicitor in 1976 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Richard Jenkins & Co at Derwen House, Court Road, Bridgend, CF31 1BN and 11 Stone Street, Llandoverly, Dyfed, SA20 OBX.

Inspections by the Forensic Investigation Unit

3. The Forensic Investigation Unit of the OSS conducted an inspection of the books of account of the Respondent commencing on 20th August 2001. A copy of the resulting report dated 30th October 2001 was before the Tribunal.
4. A further inspection of the Respondent's books of account was commenced on 15th March 2002 and a copy of the resulting report dated 8th April 2002 was before the Tribunal.

Books of Account

5. The Respondent's books of account were maintained using a basic spreadsheet programme adapted for the purpose. The following shortcomings were identified during the first inspection:
 - Although a rudimentary cashbook for client account transactions was maintained many transactions did not identify the matter to which they related.
 - Similarly rudimentary client ledger accounts were maintained but many transactions were recorded on a suspense ledger as the relevant matter could not be identified.
 - No client account bank reconciliations nor comparisons of client cash balances with liabilities to clients were produced.
 - The list of client ledger balances contained fifty-five entries, twenty-five of which were debit balances totalling £543,700.03.
 - Office account transactions relating to individual client matters were not recorded on the relevant client ledger.
 - The Llandovery office had only been part of the practice since 1st July 2001 and no accounting records had yet been prepared for that office.
6. The Respondent accepted the inadequacies of his accounting records but stated that he would be able to produce meaningful accounting records within four weeks. The Investigation Officer agreed to suspend the inspection until 24th September 2001.
7. The Investigation Officer returned to the firm on 24th September 2001 when the Respondent told him that a manual double entry accounting system had been set up for Llandovery matters which was up-to-date as of 14th September 2001. He added that the computer records for Bridgend had been verified and were in the process of being transferred to the manual system.
8. Despite the Respondent's comments the following position was found:-
 - Whilst individual client ledger balances appeared largely to have been verified, this process was incomplete.
 - No accounting records for the Llandovery office were produced.
 - No records of office account transactions were apparent.
 - Client account reconciliations and comparisons of client cash balances with liabilities to clients were still not available.

9. During the second inspection it was established that the Respondent's books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.
10. In respect of the Llandovery office, no accounting records were produced for inspection. The firm's bookkeeper, Mr B, told the Investigation and Compliance Officer that he had informed the Respondent on several occasions that the information being provided to him was totally inadequate and that he was unable to identify the client matters to which many of the transactions related. The Respondent said that he had not been aware that this was the case.
11. With regard to the Bridgend office, a clients' ledger was maintained on a computer spreadsheet system but this consisted only of client bank account transactions. Office account transactions relating to individual client matters were not recorded on the relevant client ledger accounts. Although a client account bank reconciliation as at 12th March 2002 together with a corresponding list of liabilities to clients was produced, no similar records as at earlier dates were available as Mr B said that these had not been retained.

Cash shortage

12. In view of the foregoing, the Investigation and Compliance Officer did not consider it practicable to attempt to compute the Respondent's total liabilities to clients as at 12th March 2002 but he was able to calculate that a minimum cash shortage of £4,379.48 existed on client bank account at that date in respect of the Bridgend office alone. The Investigation and Compliance Officer also noted that the majority of this minimum shortage was in existence at 31st July 2001, the date considered during the previous inspection of the Respondent's books of account.
13. The Respondent agreed the minimum cash shortage of £4,379.48 and he said that he could replace it from his own resources. However, during the previous inspection the Respondent had indicated that he would rectify the minimum cash shortage of £4,159.02 in existence at 31st July 2001. He said that he had not done this as he had asked his accountants to verify the cash shortage of £4,159.02 but this had not been completed.

Overpayments

14. The cause of the minimum cash shortage included overpayments totalling £1,989.21.
15. During the period 1st February 2000 to 6th February 2002 overpayments varying in amount from £16.91 to £1,000.50 and totalling £1,989.21 were made on account of six client matters. One of these overpayments is exemplified below.
16. The Respondent acted for M in connection with a conveyancing transaction.
17. On 1st February 2000 the relevant client ledger account was charged with a payment of £82,683 when only £81,682.50 was properly available thereby resulting in a debit balance of £1,000.50 at that date which remained the position as at 12th March 2002 more than two years later.

18. The Respondent agreed that he had been aware of this overpayment for some considerable time and that it had been referred to in the inspection report dated 30th October 2001.

Accountant's Report

19. The first inspection identified that the last Accountant's Report submitted by the Respondent was for the year 1st January 1999 to 31st December 1999. The Report for the year 1st January 2000 to 31st December 2000 due by 30th June 2001 had yet to be prepared and submitted.
20. The Respondent explained that his accountants had led him to believe that he could legitimately submit his Accountant's Report at any time during the current year but he would now apply for an extension to permit submission as soon as possible.
21. The Accountant's Report was still outstanding at the time of the second inspection.

Respondent's conveyancing matter

22. The second report identified a breach of undertaking to a mortgagee client.
23. The Respondent acted for himself and his wife in connection with their purchase of a residential property at the price of £248,000. Mr and Mrs Jenkins were assisted in their purchase by a mortgage advance of £175,000 from Monmouthshire Building Society for whom the Respondent also acted.
24. The mortgage advance was received by the firm on 9th March 2000 and the purchase was completed on 10th March 2000. As at 15th March 2002, however, the stamp duty remained unpaid and neither the transfer nor the charge in favour of the mortgagee had been registered at HM Land Registry in breach of an undertaking given by the Respondent in the certificate of title.
25. The Respondent explained that he had suffered ill health for substantially the whole of the year 2000 and that he was admitted to hospital at the beginning of 2001. He said that this had caused financial and other problems.
26. The relevant matter file was examined and it was seen that in a letter dated 21st July 2000 addressed to Monmouthshire Building Society, the Respondent wrote:-

“For your records, we await the return of the Land Certificate from first registration at HM Land Registry”.

The Respondent told the Investigation and Compliance Officer that at that time he believed that the stamp duty had been paid and that the file was with his assistant who was dealing with the post-completion formalities.

27. In another letter to the building society dated 30th March 2001 the Respondent wrote:-

“We are pressing for return and have diarised the same for the end of April if we do not hear in the interim”.

The Respondent admitted that this was “a lie” and misleading adding that he was “trying to get time”.

28. On 9th November 2001 after having admitted to the building society his earlier failure to pay the stamp duty the Respondent wrote again to his mortgagee client saying:-

“I am simply writing to confirm that I have now attended to the stamping of the Transfer deed and will forward the same to the Land Registry at the earliest opportunity”.

The Respondent admitted to the Investigation and Compliance Officer that this letter was also untrue. He said that he had the transfer ready for stamping at that time and his financial situation was improving.

29. On 4th December 2001 the Respondent again wrote to Monmouthshire Building Society this time stating:-

“You would recall when I wrote to you and I indicated that this matter had to go for stamping, which it has, and upon the return will be lodged at HM Land Registry. I would anticipate the matter being lodged at the end of next week. I will then forward to you the HM Land Registry reference number”.

30. The Respondent told the Investigation and Compliance Officer, however, that he had only delivered the title deeds of the property to the building society on 19th March 2002 and that as the stamp duty was still unpaid at that date both the stamping and the registration were to be dealt with by the building society.

31. It was noted in the second report that the building society previously sought to obtain an order for possession of the property due to non-payment of the arrears of the mortgage payments as well as the failure to submit the title deeds. The Respondent told the Investigation and Compliance Officer that he had paid arrears of £3,706 on 11th January 2002 just a few days before the scheduled court hearing.

32. The Investigation and Compliance Officer noted that the payment of £3,706 on 11th January 2002 had been made from client bank account and charged to an account in the clients’ ledger in the name of LJJ. The ledger account showed the receipt of £10,000 on 11th January 2002 and on the same date the payment of £3,706 referred to above together with three cheque payments totalling £2,530.18 in respect of staff salaries and a transfer from client to office account of £3,763.82 thus utilising all of the £10,000.

33. The Respondent said that the sum of £10,000 received on 11th January 2002 was in respect of an earlier fee note and that it was paid into client bank account in error.

Supervision

34. During the first inspection the Respondent stated that as of 1st July 2001 he had acquired a practice in Llandovery and that he normally attended there on two days each week spending the remainder of his time at Bridgend.
35. The Respondent accepted that he was the only solicitor in the practice who had held a practising certificate for at least thirty-six months within the last ten years and on this basis he agreed with the Investigation and Compliance Officer that he was the only solicitor “qualified to supervise” at either office.

Complaint by Messrs King Davies & Partners

36. Messrs King Davies & Partners complained to The Law Society by letter of 14th May 2002. They had acted for purchasers in a conveyancing transaction in which the vendors had retained the Respondent. On 15th November 2000 the Respondent gave an undertaking that he would discharge the charges against the vendors’ property in favour of the National Westminster Bank and in favour of Lloyds Bank. Despite this undertaking the Respondent did not discharge the charge in favour of National Westminster Bank. It therefore followed that the purchaser’s title to the property and his charge in favour of Nationwide Building Society could not be registered.
37. On 16th July 2002 the OSS resolved to intervene into the practice of the Respondent and to refer his conduct to the Tribunal.

The Submissions of the Applicant

38. The cash shortage identified in the first report had not been rectified by the time of the second inspection. Likewise the matter of M referred to in the first report had not been rectified by the time of the second inspection.
39. In relation to allegation (d), the Report had still not been delivered as at the day before the hearing.
40. Allegations (e), (f), (g) and (h) arose in part from the Respondent’s own conveyancing matter. The Respondent never registered the transfer or the charge and two years later the building society had done this. The building society had been a client of the practice and the Respondent had lied to them.
41. In relation to the ledger account of LJJ, no evidence had ever been produced by the Respondent that the £10,000 in LJJ’s client account had been in respect of an earlier fee note paid into client bank account in error.
42. In relation to the complaint by Messrs King Davies & Partners, the charge had still not been discharged and the purchaser’s transfer had not been registered. The bank had written to the purchaser to say that they were thinking of possession proceedings but the bank had now been directed instead to the Compensation Fund.
43. Allegation (j) was based on the fact that one of the Respondent’s offices was not supervised by the Respondent on a daily basis.

44. The submissions of the Applicant were supported by the oral evidence of Mr Robert Bernard Sage, Investigation and Compliance Officer. In his oral evidence Mr Sage confirmed his affidavit of 31st January 2003 exhibiting his report as true and accurate.
45. The Applicant then made the following further submissions.
46. The matter was presented to the Tribunal as a deliberate and wrongful course of conduct.
47. Although the Respondent had given an explanation in relation to the £10,000 in client account, that money could never properly have been used directly and there had been an improper and wrongful removal of that money.
48. The letters to the building society were deceitful and misleading.

The Findings of the Tribunal

49. The Respondent had made no representations to the Tribunal and had not challenged the documentation. The Tribunal had considered the allegations carefully one by one together with the documentation and was satisfied from that documentation that the allegations were substantiated.
50. In relation to allegation (g), money had clearly been improperly and wrongfully taken directly out of client account for the Respondent's own purposes. The Respondent had provided no evidence that it should not have been placed in client account in the first place but even had such evidence been provided the money could never properly have been used directly in this way.
51. In relation to the Respondent's own conveyancing matter, the Respondent had clearly lied to the building society. The Tribunal noted that the Respondent had explained to the Investigation and Compliance Officer that he had had a period of ill health in the year 2000, being admitted to hospital at the beginning of 2001. He said that this had caused financial and other problems. This did not, however, provide adequate mitigation for the Respondent's deceitful course of conduct in relation to his building society client who had been misled on a number of occasions. The Respondent had admitted that his letter of 30th March 2001 had contained a lie and this was compounded by subsequent letters also giving false information. The Tribunal was mindful that the standard of proof for dishonesty was high but the Tribunal was satisfied that the Respondent's conduct in relation to his conveyancing matter was dishonest.
52. The Tribunal noted that the matter complained of by Messrs King Davies & Partners remained unresolved and that the Respondent's failure to honour his undertaking had caused and continued to cause serious difficulties for the purchaser.
53. A number of serious allegations had been substantiated against the Respondent and dishonesty had been found. In the interests of the public and the reputation of the profession it was not appropriate that the Respondent be allowed to continue in practice. The Tribunal ordered that the Respondent Gwilym Richard Jenkins of

Village Farm Estate, Bridgend, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £6,395.86.

DATED this 1st day of May 2003
on behalf of the Tribunal

W M Hartley
Chairman