

IN THE MATTER OF DUNCAN JAMES KIDD, solicitor

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. RJ C Potter (in the chair)  
Mr. J C Chesterton  
Lady Maxwell-Hyslop

Date of Hearing: 20<sup>th</sup> May 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 Ian George Miller solicitor and partner in the firm of Messrs Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 7<sup>th</sup> November 2002 that Duncan James Kidd of Kingston upon Thames, Surrey a solicitor might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On the 16<sup>th</sup> April 2003 the Applicant made a supplemental statement containing further allegations and on 8<sup>th</sup> May 2003 the Applicant made a second supplemental statement containing a further allegation. The allegations set out below are those contained in the original and two supplementary statements. The Respondent was content that he had received less than the notice provided by the Solicitors Disciplinary Proceedings Rules 1994 in respect of the allegation contained in the second supplementary statement.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:-

1. he breached the Solicitors Accounts Rules 1998 in that:
  - a. between July 2000 and 5<sup>th</sup> July 2001, he failed to carry out reconciliations of his client account in accordance with Rule 32(7) of the Solicitors Accounts Rules 1998;

- b. between July 2000 and 5<sup>th</sup> July 2001, he failed to keep accounting records properly written up in accordance with Rule 32(1) of the Solicitors Accounts Rules 1998;
  - c. he received funds in respect of unpaid professional disbursements and paid them into office account but failed within two days to pay such disbursements or to transfer the value thereof to the client account in respect of two matters (F and S). Such conduct is in breach of Rule 19 of the Solicitors Accounts Rules 1998 and created a shortfall in the client account;
2. he failed to file Accountant's Reports with the Law Society in accordance with Section 34 of the Solicitors Act 1974 and various directions made by the Adjudicators of the OSS for the following periods:
    - (a) 30<sup>th</sup> September 2000
    - (b) 31<sup>st</sup> March 2001
    - (c) 30<sup>th</sup> September 2001
    - (d) 31<sup>st</sup> December 2001
    - (e) 31<sup>st</sup> March 2002
  3. he:
    - (a) failed to comply with an undertaking given by Messrs Munday's on the 20<sup>th</sup> June 1997; and
    - (b) failed to comply with the direction given by an Adjudicator of the OSS dated the 11<sup>th</sup> April 2002 to comply with the said undertaking to Messrs Munday's;
  4. he failed to provide to the Law Society's Investigation Accountant his books and records for the purposes of an inspection pursuant to Rule 34 of the Solicitors Accounts Rules 1998 which commenced on the 30<sup>th</sup> April 2002 and which was terminated on the 15<sup>th</sup> May 2002 following the Respondent's failure to thereby comply.
  5. he breached the Solicitors Accounts Rules 1998 in that
    - (a) between July 2001 and 5<sup>th</sup> July 2002, he failed to carry out reconciliations of his client account in accordance with Rule 32(7) of the Solicitors Accounts Rules 1998;
    - (b) between July 2001 and 5<sup>th</sup> July 2002, he failed to keep accounting records properly written up in accordance with Rule 32 of the Solicitors Accounts Rules 1998;
  6. in a letter to the OSS dated the 2<sup>nd</sup> November 2001 and in a conversation with Mr Cotter of the OSS on or about the 26<sup>th</sup> April 2002 the Respondent made representations to the OSS as to the state of his books of account which he knew or ought to have known were not true.
  7. he has failed to comply with an award in respect of inadequate professional service made on 4<sup>th</sup> December 2002 in respect of a complaint made by a Ms SL

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Ian George Miller 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 of all of the allegations save for allegation 3 (a) which was the subject of submissions made by the Respondent.

Ms. Julie A Cooper solicitor and partner in the firm of McClavity Cooper and Atkins gave evidence as to the Respondent's competence and character.

At the conclusion of the hearing the Tribunal ordered that Duncan James Kidd of Kingston upon Thames, Surrey a 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 (to include the costs of the Investigation Accountant of the Law Society ) to be subject to a detailed assessment unless agreed between the parties. The Tribunal further orders that the award made in respect of inadequate professional service made on 4<sup>th</sup> December 2002 in respect of a complaint made by Ms SL be treated for the purposes of enforcement as if it was an order of the High Court.

The facts are set out in paragraphs 1 to 36 hereunder:-

1. The Respondent was admitted as a solicitor in 1981. He was born in 1958. At all material times the Respondent practised on his own account under the style of Kidd & Co. with offices in Kingston upon Thames.
2. On the 2<sup>nd</sup> July 2002 the Law Society intervened in the practice of the Respondent on the grounds of breaches of the Solicitors Accounts Rules 1998.

#### Allegation 1

3. Following notice duly given an officer of the Forensic Investigation Unit (FIUO) of the Law Society attended at the Respondent's offices to inspect his books of account 5<sup>th</sup> July 2001. The FIUO's Report dated the 28 August 2001 was before the Tribunal. The FIUO noted that the books were not in compliance with the Solicitors Accounts Rules 1998 as reconciliation statements had not been carried out since July 2000.
4. The Respondent told the FIUO that "not all postings to ledgers have been done". He agreed that there were blank ledgers and in two instances, he was not able to produce ledgers which he said existed in respect of the clients concerned.
5. A number of adjustments prepared by the firm's accountants had not been posted.
6. The FIUO carried out an examination of the available books and records which revealed a minimum cash shortage of £2,085.63. Cheques received partly in respect of unpaid Counsel's fees from two clients (F and S) had been paid into the office bank account. The Respondent's bankers had refused subsequently to honour office account cheques paid to Counsel.
7. Following the visit of the FIUO, the Respondent arranged payment of Counsel's fees.

#### Allegation 2

8. Pursuant to Section 34 of the Solicitors Act 1974, solicitors in private practice are required to submit an Accountant's Report for each twelve-month period.

9. In addition, the Respondent was directed on the 2<sup>nd</sup> August 2001 to provide Accountant's Reports on a half yearly basis. A further direction was given by an Adjudicator of the OSS that Reports be provided on a quarterly basis.
10. Notwithstanding Section 34 and the OSS's directions, the Respondent failed to provide Accountant's Reports for the periods set out in Allegation 2. By resolution of an Adjudicator of the OSS dated the 15<sup>th</sup> May 2001 the Respondent was directed to file the Accountant's Report for the period ending 30<sup>th</sup> September 2000 within twenty-eight days. There was a resolution in similar terms dated the 14<sup>th</sup> December 2001 in respect of the Accountant's Report dated 31<sup>st</sup> March 2001.

Allegation 3 – undertaking given to Munday's

11. The Respondent wrote the following letter dated 20<sup>th</sup> June 1997 to Messrs Munday's;

“As you are aware we have been asked to take over the matter of contact and injunction applications on behalf of the above named.

We have today spoken to the Legal Aid Board in Brighton and both certificates have now been transferred in to our name as from today. The Legal Aid reference is Mr Craig Hutchinson.

As there is an imminent hearing we should be extremely grateful if you would pass all your files to Mrs D, this afternoon, the 20<sup>th</sup> June 1997. We are instructed that Mrs D will be at your offices at 4pm.

We will of course undertake to include your costs when we apply for taxation of our bill.

Yours faithfully,  
Kidd & Co.”

The Respondent had taken over the conduct of a matter concerning a client, Mrs D, from Munday's. Mrs D was legally aided and in accordance with normal practice the Respondent undertook to include Munday's' costs when applying for taxation of costs.

12. The matter apparently came to an end in July 1997. The Respondent did not make an application for the assessment of costs. Following numerous chasing letters from Munday's to the Respondent Munday's reported the Respondent to the OSS.
13. After further consideration the matter was considered by an Adjudicator of the OSS on the 11th April 2002. The Adjudicator directed the Respondent to comply with his undertaking within fourteen days. Notwithstanding such direction the Respondent remained in breach of his undertaking.

Allegation 4 – Failure to co-operate with the OSS's Investigation Officer

14. The underlying facts and matters in relation to this allegation were contained in an FIUO's Report dated the 23<sup>rd</sup> May 2002. That Report detailed extensive attempts on the behalf of the FIUO to obtain access to the Respondent's books and records. The Respondent said he would not be available for the inspection on 30<sup>th</sup> April 2002 as he was due to leave for a two week holiday at lunchtime on 26<sup>th</sup> April 2002.

When the Investigation Officer called the Respondent on 26<sup>th</sup> April 2002 to enquire about the nature of his holiday, Mr Kidd said that he was going to Scotland to visit his sick father and that his books could not be left with anyone else as he had no support staff and that his reporting accountant had resigned and he had not yet appointed another.

15. The FIUO asked if his books of account were up to date and reconciled, the Respondent replied that he felt that they were. When asked who was writing up the books the Respondent said that he was. The FIUO then asked if it would be possible to fax his latest client account reconciliation and a copy of the relevant client bank statement to the OSS. The Respondent said that he did not have the time as he was due away on his holiday soon. The FIUO officer asked the Respondent to provide an address in Scotland where he would be staying. The Respondent said that he could not give an address as he said that he was not sure where he was staying.
16. The FIUO had explained to the Respondent that it was very rare to postpone an inspection once written notification had been given to the solicitor. However, in this case, to allow the Respondent to go to Scotland to visit his sick father the FIUO told the Respondent that the inspection could be postponed to Thursday 2<sup>nd</sup> May 2002. A letter was sent to the Respondent by the OSS to confirm this.
17. On 29<sup>th</sup> April 2002 the Respondent wrote to the OSS stating that he believed that the postponement had been to Tuesday 7<sup>th</sup> May 2002 and not Thursday 2<sup>nd</sup> May 2002. He said that he had rearranged his diary and that he had intended to be away from his office from lunchtime on 30<sup>th</sup> April 2002 returning on 7<sup>th</sup> May 2002 for the inspection. The FIUO telephoned the Respondent at 11.00am and again at 12.10pm on 1<sup>st</sup> May 2002 and left a message on his answering machine that no further postponement would be granted and that the Respondent's attendance would be required as arranged on 2<sup>nd</sup> May 2002.
18. The Respondent telephoned the FIUO at 3.20pm on 1<sup>st</sup> May 2002 when he said that he had made appointments for the whole of 2<sup>nd</sup> May 2002 and that he would not be able to attend his offices. The FIUO asked the Respondent to detail the nature of the appointments and the Respondent said that they were various, personal in nature and would take him to various places. The Respondent declined to give any specific details regarding these appointments. The FIUO asked the Respondent if he had visited his father in Scotland and he confirmed that he had not. The FIUO informed him that the inspection would go ahead as notified on 2<sup>nd</sup> May 2002.
19. The FIUO attended the offices of the Respondent at 10.15am, 10.30am, 11.30am and again at 12.30pm on 2<sup>nd</sup> May 2002. He received no response to either the buzzer or repeated heavy knocking at any of the times noted above.
20. The Respondent sent a letter dated 1<sup>st</sup> May 2002 which was received by the OSS on 3<sup>rd</sup> May 2002. In the letter he stated that he could not be in attendance on 2<sup>nd</sup> May 2002 but he gave no reason why he could not attend. He stated that he was "not trying to avoid the inspection" and that he "will co-operate fully". The Respondent added that he would be "available for the inspection next week", i.e. the week commencing 7<sup>th</sup> May 2002, as Monday 6<sup>th</sup> May was a bank holiday.

21. On 7<sup>th</sup> May 2002, the OSS wrote to the Respondent informing him that the FIUO would attend his office at 10.00am on 10<sup>th</sup> May 2002. This letter was sent recorded delivery. On 7<sup>th</sup> May 2002, the Respondent wrote to the OSS stating that he was going to be in Court on 10<sup>th</sup> May 2002 and he asked if the inspection could be re-arranged for 15,16 or 17 May 2002. The OSS wrote to the Respondent on 8<sup>th</sup> May 2002 requesting details of his Court attendance. The Respondent responded on 9<sup>th</sup> May 2002 with the case number and the fact that the case was listed for 12.15pm at Kingston County Court. He stated that he had attended similar cases in the past few months “of a similar type which have spanned a number of hours due to protracted negotiations”. He added that he had “deliberately allowed all day for the case”.
22. The OSS wrote back to the Respondent on 9<sup>th</sup> May 2002. The letter informed him that as his office was very close, (less than a minute’s walk), from Kingston County Court and that as the FIUO would only require his attendance for a very short time, there appeared to be no valid reason to change the inspection from 10<sup>th</sup> May 2002 at 10.00am. The FIUO duly attended the office on 10<sup>th</sup> May 2002 at 9.40am and 10.00am. He received no response to either the buzzer or repeated heavy knocking at either time. The FIUO noted that the postman arrived at 10.05am and delivered some post. This post was visible to the FIUO when he peered through the letterbox at 10.15am. Again he received no response to either the buzzer or repeated heavy knocking.
23. The FIUO attended again at 10.30am, 10.45am and 11.00am. He received no response to either the buzzer or repeated heavy knocking at any time and the post was still visible. The FIUO attended again at 12.00 noon when he received no response to either the buzzer or repeated heavy knocking. At that time, the post had been removed. The Respondent had stated that he had no support staff or anyone else working for him.
24. The FIUO attended Kingston County Court at 12.02pm and was informed that the Respondent was to attend a case to be held before Judge Sturdy at 12.15 and that the case was listed for forty-five minutes. The case was before Judge Sturdy in Chambers and the FIUO had no access to the Respondent. The FIUO attended the office of the Respondent again at 1.15pm and 1.30pm when he received no response to either buzzer or repeated heavy knocking.
25. The OSS sent the Respondent a further recorded delivery letter on 13<sup>th</sup> May 2002 informing him that the FIUO would attend his office again on 15<sup>th</sup> May 2002 at 10.00am. The FIUO attended the office at 9.30am, 10.00am and 10.30am. He received no response to either the buzzer or repeated heavy knocking. At 10.30am The FIUO left a message on the Respondent's answering machine that he was terminating the inspection in order to report to the Law Society.
26. The FIUO went on to report that the Respondent, who is subject to a condition on his Practising Certificate that he deliver six monthly Accountant’s Reports. He had not produced any Reports for a period later than 31<sup>st</sup> March 2000 and the Reports for the six months ended 30<sup>th</sup> September 2000, 31<sup>st</sup> March 2001 and 30<sup>th</sup> September 2001 had not been filed with the Law Society.

27. Following the Law Society's intervention into the Respondent's practice he refused access to the Law Society Intervention Agent. An application was made for a Court Order to obtain possession to the Respondent's premises.

Allegation 5(a) and 5(b)

28. Following the Law Society's intervention into the Respondent's practice a report had been provided by the intervention agent. A copy of that report was before the Tribunal. From the schedule of accounts documents removed by the agent at the time of the intervention, it was apparent that the Respondent continued to be in breach of the Solicitors Accounts Rules 1998 between July 2001 and July 2002.

Allegation 6

29. On the 2<sup>nd</sup> November 2001 the Respondent wrote to the OSS in respect of its then investigation of the matters arising from the FIUO's Report of the 2<sup>nd</sup> August 2001. In that letter he stated: "I believe my books of account are now up to date ..... I believe my client ledgers are now up to date".
30. When the FIUO attempted to carry out his further inspection in April 2002, he spoke to the Respondent on the telephone. The FIUO reported the following exchange during that conversation:-

"The FIUO asked if the books of account were up to date and reconciled. The Respondent replied that he felt that they were. The FIUO asked who was writing up the books and the Respondent said that he was. The FIUO then asked if it would be possible to fax his latest client account reconciliation and a copy of the relevant client bank statement to the office. The Respondent said that he did not have the time as he was due away on his holiday soon".

Allegation 7

31. On 4<sup>th</sup> December 2002 an Adjudicator made an award to Ms SL in respect of inadequate professional services supplied to her by the Respondent. The Respondent was ordered to waive his costs and to pay £2,000 to Ms SL. The Respondent had not complied.

The Submissions of the Respondent in respect of Allegation 3(a)

32. The Respondent had said in his letter to Messrs Munday's dated 20<sup>th</sup> June 1997 "We will of course undertake to include your costs when we apply for taxation of our bill."
33. The Respondent said that properly construed his undertaking would not take effect until the bill was lodged. Mr Kidd said that whilst he had the bill with him at the hearing, it still had not been filed with the Court. The undertaking would not "bite" until the bill was filed with the Court.

The Submissions of the Applicant with regard to Allegation 3 (a)

34. There was no doubt that the final paragraph of the Respondent's letter of 20<sup>th</sup> June 1997 addressed to Messrs Munday's was an undertaking. There is an implied term in any solicitors undertaking that compliance will be achieved within a reasonable time. The undertaking had been given on 20<sup>th</sup> June 1997 and in May 2003 it remained undischarged, indeed the bill had not yet been lodged with the Court for taxation. By any standard an unreasonable period of time had elapsed.

35. There had been correspondence between the Respondent and Messrs. Munday's. The Respondent had apologised for delay and had at no time suggested that he had not given an undertaking.

**The Decision of the Tribunal**

36. The Tribunal Found that the Respondent did give a professional undertaking to Messrs Munday's on 20<sup>th</sup> June 1997. If the Respondent's argument were carried to its logical conclusion, namely that the undertaking did not come into effect until he lodged a bill with the Court for taxation, it followed that if he chose never to take that step, Messrs. Munday's would not have the benefit of the undertaking upon which they had placed proper reliance when handing over a file to the Respondent. It was an undertaking of a standard nature and any solicitor receiving such an undertaking would be well aware of and rely upon the implied term that full compliance would be achieved within a reasonable time.

**The Submissions of the Applicant**

37. There had been serious breaches of the Solicitors Accounts Rules.
38. The Respondent had failed to file a number of Accountant's Reports with the Law Society.
39. The Respondent's failure to co-operate with the Law Society's FIUO was extremely serious. Further the Respondent had refused access to the Law Society's appointed intervention agent and application had to be made for a Court Order to obtain access to the Respondent's premises and the possession of documents.
40. In the light of the state of the Respondent's books of account discovered by the intervention agent none of the statements made to the OSS, and/or the FIUO, in letters from the Respondent in November 2001, August 2001 and in a telephone conversation in April 2002 were true. The Respondent had deliberately given false comfort and had not told the truth.
41. The Respondent had not complied with an award made by an Adjudicator of the OSS in respect of inadequate professional services delivered to Ms SL. He was required not only to waive his costs but also to pay £2,000 to Ms SL.

**The Submissions of the Respondent**

42. The Respondent had at an early date given an indication that he admitted the allegations save for one.
43. The Respondent was not proud of what had happened. The Respondent had been in partnership with another solicitor between 1991 and 1996. From 1996 until 2002 the Respondent had been a sole practitioner. He had undertaken primarily Legal Aid work which did not generate a high fee income.
44. The Respondent's problems had occurred when he had not been able to find a replacement bookkeeper. The Respondent's own accountant had lived and worked some distance away from the Respondent's office. The Respondent had encountered problems with his accountant's fees and the accountant had withdrawn his support.



45. Before the problems currently before the Tribunal the Respondent had satisfactorily lodged his Accountant's Reports.
46. The Respondent had obtained two Legal Aid franchises in family and crime. He had experienced cash flow difficulties with regard to disbursements and day-to-day expenses.
47. The Respondent accepted that the administration in his firm was weak and things had got on top of him. During the last months of his practice he was the only fee earner in the firm.
48. There had never been any suggestion that the Respondent had behaved dishonestly. When the FIUO from the OSS contacted the Respondent the Respondent with hindsight recognised that he should have got help and concentrated on the problem. The Respondent was engaged in a busy high street practice and was operating in the face of difficulties.
49. At the time when the Respondent's Practising Certificate was suspended there were £400 in his office account and £700 in his client account which would give the Tribunal a clear idea of the small scale of his practice and of his bookkeeping deficiencies.
50. Since that time the Respondent had applied to the Law Society for a Practising Certificate which had been issued subject to the conditions that he could not be an office holder, could not handle client money and could work only in supervised employment approved by the Law Society. Those conditions were very onerous but in fact had not caused the Respondent any problems as he had obtained work with the firm in which solicitors who had trained with his own firm were partners. At that firm the Respondent was able to concentrate on legal work. He continued to concentrate on crime and matrimonial work.
51. The problems suffered by the Respondent had caused him sleepless nights and ill health. He was very ashamed to find himself appearing before the Tribunal after twenty-one years of practice.
52. The Respondent said he had no desire to be an office holder. He was entirely happy to continue to work in his current employment and under the terms of that employment.
53. The Respondent said he had not intended to mislead the FIUO but it had been his expectation that he would get himself out of the mess that he was in and the indications which he gave had reflected optimism rather than any factual account.
54. The Respondent felt saddened and remorseful. He considered himself fortunate to have the support of Miss Cooper, a partner in the firm currently employing him. The Respondent had to accept that he did mislead the FIUO. At the time that had not been a deliberate intention.

55. The Respondent's financial circumstances prevented him from complying with the award made by the OSS in respect of inadequate professional services delivered to Ms. SL.
56. The Respondent indicated that steps were being taken to ensure that the files of his old firm could be costed and then the monies so generated would be passed to the Law Society's Compensation Fund.
57. Miss Cooper in her evidence supported the Respondent. She had been aware of an apparent decline in the Respondent's health and had noted concern as to his mental state and mental well being expressed by the Respondent's secretary. She believed the Respondent a proud man who would not wish to accept failure.
58. She said that the Respondent had got into a mess and had become depressed and anxious. He tried to dig himself out of his difficulties instead of seeking help and as a result dug himself into a deeper hole. The Respondent had worked entirely satisfactorily in Miss Cooper's practice and it was her intention that her firm would continue to employ him. He was closely supervised and was not permitted to give undertakings. It was hoped that the Tribunal would be able to adopt a lenient stand and would not interfere with the Respondent's ability to practise.

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

59. The Tribunal found all of the allegations to have been substantiated.
60. The Tribunal had given particularly careful consideration to the appropriate penalty to be imposed upon the Respondent. In reaching its conclusion the Tribunal had taken into account a number of mitigating factors. The Respondent had admitted almost all of the allegations at an early opportunity. He enjoyed a hitherto unblemished record before the Tribunal. The Respondent had not taken client money. The Tribunal also paid due regard to the helpful testimony of Miss Cooper.
61. There were, however, a number of aggravating factors. The breaches of the Solicitors Accounts Rules were extremely serious. The Respondent appeared to have disregarded those Rules for a long period of time and as a result no proper protection was afforded to the public at all. The Respondent had not kept proper books of account nor had he filed annual (and subsequently required six monthly) Accountant's Reports. The Respondent's conduct in relation to the investigation by the OSS demonstrated a willingness to deceive the Respondent's own professional regulatory body. He had committed deliberate acts to defeat the proper progress of the investigation over a period of time. Not only had the Respondent not assisted with the FIUO's investigation, he had written letters and given assurances which were untrue and he had not co-operated with the Law Society's intervention into his practice. Ultimately his co-operation was obtained only following the inconvenience and expense of having to apply to the Court for an Order upon which a penal notice was endorsed.
62. The Tribunal was forced to conclude that the Respondent had fallen well below the standards of probity, integrity and trustworthiness required of a member of the solicitors' profession. The Tribunal concluded that it was appropriate in all of the circumstances to impose the ultimate sanction upon the Respondent. It was right also

that he should pay the costs of and incidental to the application and enquiry (such costs to include the costs of the FIUO of the OSS) all such costs to be subject to a detailed assessment if not agreed between the parties. Further it was right that the Tribunal make an order that the award made on 4<sup>th</sup> December 2002 in respect of inadequate professional services delivered by the Respondent to Ms SL be treated for the purposes of enforcement as if it were an order of the High Court.

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

R JC Potter  
Chairman