

IN THE MATTER OF RUSSELL STEPHEN HISCOTT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mr L N Gilford  
Mrs V Murray-Chandra

Date of Hearing: 10th June 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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on 18<sup>th</sup> December 2002 that Russell Stephen Hiscott a solicitor of care of Bobbetts Mackan, 17 Berkeley Square, Clifton, Bristol, BS8 1HB 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 against the Respondent were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-

- (a) That he had failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991 and Rule 32 and 33 of the Solicitors Accounts Rules 1998;
- (b) That he had utilised clients' funds for his own purposes;
- (c) [Withdrawn];

- (d) That he had utilised clients' funds for the purposes of other clients;
- (e) That contrary to Rule 8 of the Solicitors Accounts Rules he had drawn money out of client account other than permitted by Rule 7;
- (f) [Withdrawn].

At the opening of the hearing the Applicant sought to withdraw allegations (c) and (f). The Tribunal consented thereto.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10<sup>th</sup> June 2003 when Peter Harland Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent (notified to the Applicant) of allegations (a), (b), (d) and (e).

At the conclusion of the hearing the Tribunal ordered that the Respondent Russell Stephen Hiscott of care of Bobbetts Mackan, 17 Berkeley Square, Clifton, Bristol, BS8 1HB 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 £16,238.54 inclusive.

**The facts are set out in paragraphs 1 to 64 hereunder: -**

1. The Respondent, born in 1949, was admitted as a solicitor in 1975. At the material times the Respondent practised on his own account under the style of Hiscott & Co at 1<sup>st</sup> Floor, 13 Monnow Street, Monmouth, NP25 3EF.
2. On 28<sup>th</sup> February 2002 the Adjudication Panel at the OSS resolved to intervene into the Respondent's practice.
3. Following notice duly given to the Respondent the Forensic Investigation Unit of the OSS began an inspection of his books of account commencing on 10<sup>th</sup> August 2002. Reports were prepared dated 1<sup>st</sup> February 2002 and 20<sup>th</sup> February 2002. Both of these reports were before the Tribunal.
4. The first report revealed that in addition to the accounts disclosed to the Investigation Accountant by the Respondent, the Respondent had opened during September 2000 a deposit account at National Westminster Bank plc entitled "Hiscott & Co re NTJ (25309978)" with an opening deposit of £14,347.14.
5. During the initial interview on 10<sup>th</sup> August 2000 the Investigation Accountant had noted that no building society accounts were maintained as at 30<sup>th</sup> June 2000. Following discussion the Respondent produced a letter from Nationwide Building Society confirming that there was an account entitled "re R S Hiscott – NTJ Deceased, Account

No. 0482/310704032” upon which a closing balance of 1<sup>st</sup> September 2000 of £20,820.28 credit existed.

6. On 31<sup>st</sup> January 2002 the Investigation Accountant asked the Respondent to indicate matters where he was holding funds in building society accounts as at 31<sup>st</sup> December 2001 and he provided details of two accounts with Nationwide Building Society, one entitled “Hiscott & Company Solicitors Commissions (0482/265518575)” with £213 credit and the other entitled “Russell Stephen Hiscott for DJ (18/02/02)” (25309978) with £10,000 credit.
7. The Respondent also confirmed that the Nationwide account in relation to NTJ Deceased had been closed during September 2000 and funds transferred to the designated Nat West deposit account.
8. During his inspection the Investigation Accountant asked the Respondent to produce the client matter files relating to NTJ Deceased for inspection. The Respondent produced two files (including a correspondence file from 1999) and on 17<sup>th</sup> August 2000 said that there was a further file in relation to probate work prior to the 1999 correspondence file which he could not locate. There was accounts information in respect of the estate on the missing file.
9. Further information was required but this had not been forthcoming. On 31<sup>st</sup> January 2002 the Respondent provided some additional information but it had not been possible to verify certain transactions said to have taken place.

#### Liabilities to clients

10. Due to the concerns raised in respect of the NTJ Deceased and MLM Deceased matters, the Investigation Accountant had not been able to form an opinion as to whether the Respondent held sufficient funds in client account to cover his total liabilities to clients.

#### The matter of NTJ Deceased

11. NTJ died on 21<sup>st</sup> October 1994 and by her Will dated 19<sup>th</sup> August 1991 she appointed the Respondent and Peter John Kingscote to be executors and trustees.
12. Probate was granted to the Respondent on 12<sup>th</sup> December 1999 with power reserved to another executor. The gross value of the estate amounted to £180,509 and the net value of the estate amounted to £179,452.
13. During his inspection the Investigation Accountant was provided with a client ledger account No. 3134 which was headed “NTJ Deceased re Probate”. The ledger consisted of five pages culminating in a balance of £27.95 at 3<sup>rd</sup> April 1996.
14. The ledger was summarised as follows:-

|   | <u>Receipts</u>   | <u>Payments</u>   | <u>Balance</u> |
|---|-------------------|-------------------|----------------|
| (i) Estate assets realised                | £14,526.28        |                   |                |
| (ii) Loan from executors A/C              | 6,000.00          |                   |                |
| (iii) From Cheltenham & Gloucester B/S    | 7,100.00          |                   |                |
| (iv) Repayment of loan from Executors A/C |                   | 6,054.02          |                |
| (v) Tax payments                          |                   | 3,650.00          |                |
| (vi) Sundry payments                      |                   | 1,165.07          |                |
| (vii) To office A/C for costs             |                   | 16,729.24         |                |
|   | <u>£27,626.28</u> | <u>£27,598.33</u> | <u>£27.95</u>  |

15. A further copy of this ledger provided by the Respondent with his letter dated 12<sup>th</sup> July 2001 showed that the balance of £27.95 had been transferred to office bank account on 17<sup>th</sup> September 1998.

16. No further entries appeared on ledger No 3134 until September 2000 when the following entries appeared:

|        |                            | <u>Client<br/>A/C<br/>Payments</u> | <u>Receipts</u> | <u>Balance</u> |
|--------|----------------------------|------------------------------------|-----------------|----------------|
|        | No entries since Sept 1998 |                                    |                 |                |
|        | <u>2000</u>                |                                    |                 |                |
| (viii) | 3 Sept                     | Monies into Estate                 | 20,843.14       | 20,843.14      |
| (ix)   | 11 Sept                    | Health Care Trust                  | 500.00          | 20,343.14      |
| (x)    |                            | Trans to special des a/c           | 14,347.14       | 5,996.00       |
| (xi)   | 13 Sept                    | Trans from special des a/c         | 4.00            | 6,000.00       |
| (xii)  | 21 Sept                    | Beneficiary payment                | 6,000.00        | nil            |

17. The Respondent prepared a schedule headed "NTJ Schedule of Assets and Payments". The Respondent confirmed that this schedule represented the full position except for land and property which he had dealt with by transfer to the beneficiary concerned.

18. A summary of the schedule showed:-

|   |                  |                   |
|---|------------------|-------------------|
| Free estate                                     |                  | £59,298.16        |
| <u>Less:</u> Beneficiaries                      | £16,241.47       |                   |
| Other payments                                  | <u>22,236.41</u> | 38,377.88         |
| Balance   |                  | 20,820.28         |
| <u>Add:</u> Interest                            |                  | 22.86             |
| Nationwide letter and payment to client account |                  | <u>£20,843.14</u> |

19. There were two areas where the transactions shown on the client ledger accounts differed from the schedule prepared by the Respondent.

Free estate/assets realised

20. The Respondent showed the free estate as £59,248.16 whereas the client ledger showed that estate assets realised were only £14,526.28.
21. The difference of £44,771.88 (£59,298.16 - £14,526.28) was accounted for in the main by two receipts totalling £43,017.67 (£23,447.98 + £19,569.69) in respect of the closure of the deceased's Cheltenham & Gloucester Building Society accounts on 15<sup>th</sup> December 1994.
22. The Respondent provided copies of the accounts showing their closures and the cheques to close were both made payable to Hiscott & Co.
23. A client bank account statement showed that the amount of £19,569.69 was paid into that account on 20<sup>th</sup> December 1994. The amount was not credited to the NTJ ledger. On 31<sup>st</sup> January 2002 the Investigation Accountant obtained the client cash sheets for December 1994 and they showed, inter alia, the following transaction for a client ledger "MOJ a/c No. 2907":

|                      |                 |                  |
|----------------------|-----------------|------------------|
| Interest from estate |                 | £19,569.69       |
| Standard Life        | £10,000.00      |                  |
| Nat Savings          | <u>5,000.00</u> | <u>15,000.00</u> |
|                      |                 | <u>£4,569.69</u> |

24. The client ledger No. 2907 could not be found on 31st January 2002. Neither of the payments to Standard Life and National Savings were mentioned in the Respondent's schedule.
25. It was not known how the further amount of £23,447.98 had been dealt with.

Payments to Beneficiaries

26. The Respondent showed payments to beneficiaries on his statement as £16,241.27 whereas the client ledger showed that no amounts were paid to beneficiaries from client bank account prior to September 2000.
27. The Respondent produced receipts from beneficiaries to indicate that the following payments had been made during the period noted below:-

|      |      |                   |
|------|------|-------------------|
| 1998 | Sept | £1,000.00         |
|      | Dec  | 82.44             |
|      | Dec  | 500.00            |
| 1999 | June | 5,000.00          |
|      | June | 4,000.00          |
|      | June | 500.00            |
|      | June | 500.00            |
|      | July | 1,068.49          |
|      | July | 1,000.00          |
|      | Dec  | 236.22            |
| 2000 | Jan  | 1,177.16          |
|      | Jan  | <u>1,177.16</u>   |
|      |      | <u>£16,241.47</u> |

28. It was not known how those payments had been made.
29. The sum of £20,843.14 was held in Nationwide Building Society at 1<sup>st</sup> September 2000.
30. The reconciliation of the figures according to the client ledger transactions and the schedule provided by the Respondent indicated that the funds in the building society were accounted for as follows:-

|  |                   |
|--|-------------------|
| Cheltenham & Gloucester Building Society funds | £43,017.67        |
| <u>Less: Payments to beneficiaries</u>         | <u>16,241.47</u>  |
|  | 26,776.20         |
| Less: Transfers to client bank account         | <u>7,100.00</u>   |
|  | 19,676.20         |
| Unexplained difference                         | <u>1,144.08</u>   |
|  | <u>£20,820.28</u> |

31. Enquiries were made which confirmed:-
- (i) The account was opened only on 14<sup>th</sup> August 2000;
  - (ii) The account was opened with a cheque for £20,820.28 drawn on Woolwich Building Society;
  - (iii) The Woolwich cheque for £20,820.28 was withdrawn from an account numbered 487012599 designated "Hiscott & Co re Mr MLM Deceased".
32. The Respondent had transferred amounts totalling £16,757.19 for his "costs" in relation to NTJ Deceased.
33. In his Schedule of Assets and Payments the Respondent listed the following:-

|   |                   |
|---|-------------------|
| Bills pre death and funeral and testamentary expenses | £8,205.46         |
| Disbursements   | 1,231.67          |
| Costs of administration                               | <u>9,165.00</u>   |
|   | <u>£18,602.13</u> |

34. The under-noted transfers had been made and six “bills” in respect of transfers were attached to the report:-

| <u>1994</u>     |                   | <u>Bill No</u> |
|-----------------|-------------------|----------------|
| Nov 30          | £2,350.00         | 3134           |
| Dec 19          | 2,350.00          | 3409           |
| Dec 28          | 4,112.50          | 3441           |
| <br><u>1995</u> |                   |                |
| Jan 9           | 587.50            | 3440           |
| Jan 17          | 1,175.00          | 3416           |
| Jan 17          | 940.00            | 3417           |
| June 28         | 600.00            |                |
| Oct 2           | <u>4,614.24</u>   |                |
|                 | <u>£16,729.24</u> |                |

35. The bills seen did not give any details of time spent and the period of charges and all save for No 3134 showed charges in respect of estate work.

MLM Deceased

36. The Respondent was co-executor with LAJ in the probate of MLM who died on 1<sup>st</sup> March 2000. Probate was granted on 17<sup>th</sup> May 2000. The gross estate was valued at £326,530 and the net estate at £309,435.
37. The Will of MLM did not make any provision for funds to be utilised on behalf of other estates.
38. Client ledger accounts were produced and showed, inter alia, the sale of a property for £107,000 and the investment of funds totalling £102,000 into a building society account at Nationwide. The Respondent provided the passbook in connection with this investment which showed that the account had been closed on 12<sup>th</sup> April 2001 following payments set out below:-

|             |     |           |
|-------------|-----|-----------|
| 20 Oct 2000 | CHQ | £7,607.32 |
| 20 Oct 2000 | CHQ | 31,334.00 |
| 20 Oct 2000 | CHQ | 62,668.00 |

39. No details of those payments had been provided but the Will did provide for payments to the beneficiaries in the ratio of 2:1.
40. The funds held on an account in the name of MLM at Woolwich plc were utilised to open an account for the NTJ estate matter. Details of this account were not provided by the Respondent but enquiries revealed the following:-

Woolwich plc, 22/24 Commercial Street, Newport, Gwent, NP9 1SN  
Balance at 20<sup>th</sup> November 2001 re MLM Deceased  
Account No. 487012599 - £123,522.56 credit

41. The Respondent could not explain to the Investigation Accountant why funds apparently held in an account for this client matter were utilised for a totally unconnected client matter.
42. When asked to provide the passbook and statements for this account the Respondent said that he believed these details would be on the MLM probate file.
43. The Woolwich account detailed numerous receipts and payments, none of which were capable of verification. None of the payments followed the beneficiary payment ratio of 2:1.
44. The second Forensic Investigation Report dated 20<sup>th</sup> February 2000 recorded that a brief review of the relevant papers and building society passbooks confirmed that the amount of £20,843.14 had been improperly taken from funds in relation to MLM Deceased and utilised for an unconnected estate matter relating to NJT Deceased.
45. In addition the Woolwich Building Society account opened in the name of MLM Deceased showed, inter alia, the following:-

|          | <u>Investments</u>      | <u>Withdrawals</u> | <u>Balance</u> |
|----------|-------------------------|--------------------|----------------|
| 24.05.00 | Balance brought forward |                    | 0.00           |
| 24.05.00 | 21,633.46               |                    | 21,633.46      |
| 24.05.00 | 15,771.77               |                    | 37,405.23      |
| 24.05.00 | 20,000.00               |                    | 57,405.23      |
| 25.05.00 | 20,000.00               |                    | 77,405.23      |
| 30.05.00 | 457.65                  |                    | 77,862.88      |
| 30.05.00 | 6,903.91                |                    | 84,766.79      |
| 01.06.00 |                         | 25,000.00          | 59,766.79      |
| 01.06.00 |                         | 25,000.00          | 34,766.79      |
| 06.07.00 | 47,955.06               |                    | 82,721.85      |
| 14.07.00 | 3,858.05                |                    | 86,579.90      |
| 14.08.00 |                         | 20,820.28          | 65,759.62      |
|          | <u>136,579.90</u>       | <u>70,820.28</u>   |                |



46. The correspondence file confirmed all investments as those on behalf of MLM Deceased.
47. The two payments of £25,000 each were to a Mr RAA. MLM's Will did not mention RAA and ledger balances as at June 2000 indicated that RAA was a client of the Respondent's firm.
48. The Report said that it was apparent that the Respondent had misused funds totalling £70,820.28 (£20,820.28 + £25,000 + £25,000) from the estate of MLM Deceased.
49. A further report was prepared following The Law Society's intervention into the Respondent's practice.

RJB Deceased – shortage £120,327.51

50. Mrs RB (the widow of Mr B) reported to the Police that funds had been withdrawn from a building society account without her knowledge.
51. Mr B died on 10<sup>th</sup> September 2000 and in his Will dated 30<sup>th</sup> September 1986 he appointed his wife and two others to be his executors and trustees.
52. Mrs B was named as the sole beneficiary.
53. By Codicil dated 20<sup>th</sup> November 1988 the firm of Kingscote & Co replaced the "two others" as joint executor with Mrs B.
54. By affidavit dated 24<sup>th</sup> September 2001 the Respondent (by virtue of his association with Kingscote & Co) indicated his right to obtain the grant of probate jointly with Mrs B.
55. Probate was granted to Mrs B and the Respondent on 3<sup>rd</sup> October 2001.
56. The estate had been conducted through:-

Hiscott & Co client account – Nat West Bank  
Hiscott & Co Trustees for Mr B – C & G Building Society  
The Respondent/Mrs B - C & G Building Society

57. In addition funds had been lodged in and withdrawn from a Woolwich Building Society account – Hiscott & Co re MLM Deceased.
58. A review of the accounts revealed a shortage of £120,327.51 in respect of B's estate calculated as follows:-

|                                     | <u>Liability of Estate</u> | <u>Funds Available</u> |
|-------------------------------------|----------------------------|------------------------|
| Client A/C                          | 514.49                     | 514.49                 |
| Hiscott & Co C & G Trustees for RJB | 4,672.49                   | 4,671.49               |
| The Respondent/Mrs B C & G          | 5,526.80                   | 5,526.80               |
| Hiscott & Co – Woolwich             | <u>120,327.51</u>          |                        |
|                                     | <u>£131,041.29</u>         | <u>£10,713.78</u>      |
| Deficit                             |                            | <u>£120,327.51</u>     |

59. It had not been possible to account exactly for the shortage of £120,327.51 but a review of the Hiscott & Co – Woolwich Building Society account in the name of MLM Deceased revealed the following:-

| <u>Item</u> | <u>2001</u> |                     | <u>Payment</u> | <u>Receipt</u> | <u>Balance</u> |
|-------------|-------------|---------------------|----------------|----------------|----------------|
|             | 18-Nov      | Balance             |                |                | £8,522.56      |
|             | 20-Nov      | In                  |                | 115,000.00     | 123,522.56     |
| 1           | 07-Dec      | H & Co Client a/c   | 1,794.56       |                | 121,728.00     |
| 2           | 14-Dec      | Mrs W               | 70,013.65      |                | 51,714.35      |
| 3           | 14-Dec      | CAE                 | 29,362.17      |                | 22,352.18      |
| 4           | 21-Dec      | LMV                 | 8,000.00       |                | 14,352.18      |
|             | <u>2002</u> |                     |                |                |                |
|             | 04-Jan      | In                  |                | 10,000.00      | 24,352.18      |
| 5           | 07-Jan      | H & Co - Office a/c | 1,300.00       |                | 23,052.18      |
| 6           | 07-Jan      | H & Co - Office a/c | 3,700.00       |                | 19,352.18      |
| 7           | 10-Jan      | H & Co - Office a/c | 2,350.00       |                | 17,002.18      |
| 8           | 16-Jan      | H & Co - Office a/c | 2,000.00       |                | 15,002.18      |
| 9           | 16-Jan      | H & Co - Office a/c | 343.07         |                | 14,659.11      |
| 10          | 21-Jan      | JPH                 | 10,000.00      |                | 4,659.11       |
|             | 02-Feb      | Interest            |                | 13.38          | 4,672.49       |
|             | 02-Feb      | Out                 | 4,672.49       |                | Nil            |

60. Funds of £120,327.51 which should have been held on behalf of the estate of RJB Deceased had been paid either on behalf of unconnected matters or to the Respondent's office bank account.
61. Items 5, 6 and 8 (totalling £7,000) appeared in the books of account as "Capital Introduced".
62. The Respondent had since at least 1995 been lodging amounts in his office bank account with the narration "Capital".
63. A review of the firm's cash book sheets for the period 1<sup>st</sup> January 1995 to 31<sup>st</sup> January 2002 indicated that amounts totalling £167,684 fell into that category.

64. Amounts totalling £29,625 (including the £7,000 mentioned above) had been withdrawn from the account of Woolwich Building Society (MLM).

**The Submissions of the Applicant**

65. The Applicant put the matter to the Tribunal as demonstrating a deliberate repetitive dishonest use of clients' funds over a long period of time by the Respondent.
66. There were criminal proceedings against the Respondent pending. It was expected that he would be charged at the end of June 2003. The Respondent, his solicitors and the Police were aware of the disciplinary proceedings but no application had been made to the Tribunal either for privacy or for adjournment.

**The Submissions on behalf of the Respondent**

67. The Respondent made no submissions.

**The Findings of the Tribunal**

68. The Tribunal found allegations (a), (b), (d) and (e) to have been substantiated, indeed they were not contested. The Tribunal find that the Respondent has been guilty of a deliberate, repetitive dishonest course of action over a long period of time. He had been in breach of the Solicitors Accounts Rules and had not exercised the fairness and proper stewardship over clients' monies which is expected of a solicitor. The Respondent's dishonest taking of clients' money could only bring the solicitors' profession into serious disrepute and it was right that the public should be protected from a solicitor prepared to act in such a heinous manner. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and further ordered that he pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of The Law Society) in a fixed sum.

DATED this 3<sup>rd</sup> day of July 2003  
on behalf of the Tribunal

D J Leverton  
Chairman