

IN THE MATTER OF MICHAEL BROCKLEBANK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr W M Hartley
Mrs S Gordon

Date of Hearing: 15th July 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 Jonathan Richard Goodwin, solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH on 4th March 2003 that Michael Brocklebank of Granborough Road, Winslow, Buckinghamshire, solicitor might be required to answer the allegations set out 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:-

- (i) That he had withdrawn monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;
- (ii) That he had failed to keep accounts properly written up for the purposes of Rule 32 (1) of the Solicitors Accounts Rules 1998;
- (iii) He had failed to rectify the shortage identified in clients' funds contrary to Rule 7 of the Solicitors Accounts Rules 1998;
- (iv) That he had utilised clients' funds for the benefit of other clients;

- (v) That he had failed and/or delayed in registering title following completion and in so doing failed to act in the best interests of his client(s) contrary to Practice Rule 1 (c) (d) and (e) of the Solicitors Practice Rules 1990;
- (vi) That he had failed to exercise any or any adequate supervision of staff.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15th July 2003 when Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool, L2 5RH 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 contained in his letter to the Applicant received on 31st March 2003. During the hearing the Applicant submitted to the Tribunal a schedule of Compensation Fund claims and payments.

At the conclusion of the hearing the Tribunal ordered that the Respondent Michael Brocklebank of Winslow, Buckinghamshire, 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 £6,791.54.

The facts are set out in paragraphs 1 to 22 hereunder: -

1. The Respondent, born in 1946, was admitted as a solicitor in 1971 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 Archdeacon & Brocklebank from offices at 8A Kingsbury, Aylesbury, Buckingham, HP20 2HT. On 7th October 2002 The Law Society resolved to intervene into the Respondent's practice.
3. The Forensic Investigation Unit ('FIU') carried out an inspection of the Respondent's books of account commencing 8th August 2002. A copy of the FIU Report dated 30th August 2002 was before the Tribunal.
4. The Respondent's books of account did not comply with the Solicitors Accounts Rules. As at 31st July 2002 the list of client balances contained 105 debit balances totalling £993,054.35.
5. As at the same date a client ledger described as "Unknown Clients" recorded a credit balance of £430,408.22. The Investigation Officer was informed by the Respondent's bookkeeper that the postings to the ledger represented lodgements in the client bank account which could not be allocated to any particular client.
6. The Investigation Officer ascertained that not all of the debit balances represented genuine client account shortages. Certain of the funds held in the "Unknown Clients" ledger could be allocated to client ledgers, which recorded a debit balance and it was also identified that there were instances of mis-postings which, when corrected, would negate or reduce client debit balances.

7. The Respondent was asked if the accounts were reliable to which he responded “No they are not”. As a result the Investigation Officer was not able to ascertain the firm’s liabilities to clients. However, the Investigation Officer identified 90 client debit balances resulting in a client account shortage of £169,673.99. Asked if he could replace the cash shortage, the Respondent said “I have not got the money, I will have to get it back from the clients, we will get in touch with the clients”. The cash shortage had not been rectified.
8. The cash shortage of £169,673.99 was caused as a consequence of:-
- | | | |
|----|----------------|-------------|
| a) | over payments | £168,098.01 |
| b) | over transfers | £1,575.98 |

Overpayment

9. Paragraph 14 of the FIU Report identified that between 3rd September 2001 and 30th July 2002, 85 over payments, varying in amount between £0.34 and £36,070, totalling £168,098.01 had been made from client bank account when insufficient funds stood to the credit of the ledgers of the clients concerned. The Investigation Officer exemplified two matters in his report.

JC and SO - £36,070

10. The Respondent acted for JC and SO in relation to the purchase of a property in the sum of £38,000. The clients were assisted with a mortgage of £36,100 from the Nationwide Building Society for whom the Respondent also acted. Completion took place on 29th July 2002 and an amount of £38,250.62 was sent by CHAPS payment from the firm’s client bank account to the client bank account of the seller’s solicitors. As at the date of the completion only £2,479.21 stood to the credit of the client ledger. The payment of £38,250.62 produced a debit balance of £35,771.41. On the 30th July 2002 the debit balance was increased to £36,070 by the transfer of costs of £298.59 from client to office bank account.
11. Further, as at 21st August 2002 the mortgage advance from the Nationwide Building Society had not been received by the Respondent’s firm. The Respondent was asked by the Investigation Officer how this situation had arisen to which he replied “We should have refused to complete. We obviously thought the money was there.... I accept it has happened but do not know how”. The Respondent was asked whose money had been used to complete the transaction to which he replied “Other clients’ money”.

JZ and PY - £18,492.79

12. The Respondent acted for JZ and PY in relation to their purchase of a property in the sum of £186,000. On 21st June 2002 a cheque in the sum of £18,600 representing the deposit on the purchase was drawn on the firm’s client bank account and was sent to the seller’s solicitors. As at that date the clients’ ledger recorded a debit balance of £7 and the payment increased the debit balance to £18,607. The file cover contained a note recording the receipt of £18,600 from the clients. However, the Investigation Officer was unable to find a receipt for that amount on the bank statement or in the

Respondent's books of account. On 26th June 2002 the sum of £169,378.80 was credited to the client ledger resulting in a credit balance of £150,771.80.

13. Completion took place on 1st July 2002. On that date an amount of £167,400 was sent by CHAPS payment to the seller's solicitors, producing a debit balance in the sum of £16,628.20 on the client ledger. On the 2nd July 2002 the debit balance was increased to £16,932.79 by the transfer of costs of £304.59 from client to office bank account. Further, on 15th July 2002 the debit balance was increased again by the sum of £1,860 as a result of a payment from client bank account in relation to stamp duty. On 16th July 2002 the debit balance was reduced to £18,492.79 by the credit of £300 to the client bank account.
14. The Respondent was asked to provide an explanation for the missing deposit of £18,600. The Respondent said "It came in as a bankers draft, can we find it, can we hell. It was on the file but has been lost in the office. I don't know how this has happened". When asked whose money had been used to complete the transaction the Respondent replied "Other clients' money".
15. The Investigation Officer ascertained that the Respondent specialised in low cost volume conveyancing. The Respondent advertised in the London Evening Standard and in twelve yellow pages in and around London. The Respondent charged the sum of £199 plus VAT and disbursements for all properties up to £1 million. The Investigation Officer ascertained that the volume of work had been increasing since the beginning of 2002 to the extent that in January there were 46 completions but in the months of April, May, June and July there were 71, 89, 77 and 87 completions respectively.
16. The Respondent confirmed that he was the only fee earner at the firm and that only two members of his staff had any experience of conveyancing. The Respondent also conceded that he did not have any previous experience of volume conveyancing. The Respondent was asked if he considered that he had sufficient people, systems and procedures in place to deal with the volume of work to which he replied "Right now to be honest I would rather being doing 70 completions a month so perhaps just about". When asked if he could cope the Respondent said "No short term we have problems. We would like to do better".
17. The Investigation Officer was provided with a list of 58 completions which still had the registrations outstanding. The oldest of those matters related to a completion that took place on 7th March 2002. Certain of the outstanding registrations were undertaken as a consequence of the Investigation Officer's visit to the firm. However, as at 21st August 2002 there remained twenty outstanding registrations, the oldest of which related to a completion on 28th March 2002. The Respondent told the Investigation Officer that 94A searches had not been renewed after completion. The Investigation Officer noted that the effect of the failure to renew the 94A searches was to compromise the security of the mortgagees. The Respondent told the Investigation Officer that he had not informed the mortgagees of the situation.
18. The Investigation Officer formed the impression that a Mr D, the office manager, was running the firm. The Respondent was asked by the Investigation Officer if that was the case to which he replied "I own the firm but he is managing it for me". The

Respondent was then asked how he supervised his staff to which he responded "If they want help they come to me". The Respondent did, however, agree that the supervision was limited.

19. By letter dated 13th September 2002 the OSS wrote to the Respondent seeking his explanation in relation to those matters set out in the FIU Report dated 30th August 2002. The Respondent provided his response by letter dated 18th September 2002. In relation to the "Unknown Clients" ledger, he said that was started by the bookkeeper to overcome the delay at the month end, whereby monies paid in direct to the bank could not be identified immediately and it was imperative that the bank reconciliations were prepared in accordance with the timescale laid down by the Solicitors Accounts Rules. The Respondent indicated that despite requests to his bank to provide more information on the bank statements to help him identify monies that clients had paid in direct, such information was not provided with the result that the credit balance of £430,408.22 came about. The Respondent indicated that urgent steps had been taken to rectify the client balance shortages including collecting outstanding monies from clients and transferring money from office to client account. He also indicated that steps were being taken to computerise the accounting system. The Respondent asserted that the fact he operated a manual bookkeeping system contributed to the errors on the books. The Respondent indicated that the increase in conveyancing work coincided with the decline in his health but that the backlog of work had been overcome and indeed the work reduced. In relation to the outstanding registrations, the Respondent indicated he was bringing the same up to date.
20. The Respondent provided further representations by letter dated 23rd September 2002 to which he attached a registration schedule.
21. By letter dated 27th September 2002 the OSS sent the Respondent a case note that would be considered in due course. By letter dated 2nd October 2002 the Respondent provided further representations.
22. On 7th October 2002 an emergency delegated decision by the Chairman acting under powers delegated by the Compliance Board resolved to intervene into the Respondent's practice and to refer his conduct to the Tribunal. The Respondent was notified of the Resolution by letter dated 21st October 2002.

The Submissions of the Applicant

23. In his letter received by the Applicant on 31st March 2003 the Respondent had said that he was in receipt of income support and that there was no point in the Tribunal fining him or ordering costs. He said that he was unemployed and unemployable. The Applicant had written and offered travelling expenses to the Respondent but he had indicated by telephone that he did not wish to attend the hearing.
24. The Applicant did not allege dishonesty against the Respondent but put the case forward as a serious one. There had been serious breaches of the Solicitors Accounts Rules and a wholesale failure by the Respondent to manage his accounts. The integrity of client accounts was fundamental to a solicitor's practice and in the submission of the Applicant the Respondent's misconduct was serious and was conduct unbecoming a solicitor.

25. The Tribunal was referred to the schedule of Compensation Fund claims and payments.
26. The Applicant had served a schedule of costs on the Respondent who had not replied. Notwithstanding the comments of the Respondent in his letter, the Applicant sought an Order for costs against the Respondent. Enforcement would be a matter for The Law Society to consider.

The Findings of the Tribunal

27. The Tribunal found the allegations to have been substantiated, indeed the Respondent had indicated in his letter to the Applicant that they were not contested. The Tribunal had considered the documentation, the submissions of the Applicant and the Respondent's letter. No dishonesty had been alleged against the Respondent but the Tribunal accepted the submission of the Applicant that there had been a wholesale failure by the Respondent to manage his accounts. It was essential that the public were able to have confidence in every solicitor's stewardship of clients' funds. The Respondent had fallen very far short of the standards expected of solicitors in that regard. It was not appropriate that he be allowed to continue in practice in the interests of the protection of the public and of the reputation of the profession.
28. The Tribunal had noted the Respondent's comments in his letter regarding his impecunious circumstances. Nevertheless the Tribunal considered that it was appropriate that an Order for costs be made against him. The Law Society would, through the Applicant, be aware of those circumstances when considering enforcement.
29. The Tribunal ordered that the Respondent Michael Brocklebank of Granborough Road, Winslow, Buckinghamshire, 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 £6,791.54.

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

R B Bamford
Chairman