

IN THE MATTER OF DONALD KEITH HALLING, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr P Kempster
Lady Bonham-Carter

Date of Hearing: 3rd 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 Andrew Miller solicitor employed by The Law Society at the OSS of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 3rd April 2003 that Donald Keith Halling of Central Avenue, Tyne & Wear, 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.

The allegations were that the Respondent had :-

- (i) Contrary to Rule 15 of the Solicitors Accounts Rules 1998 failed to keep clients' money banked in client account;
- (ii) Transferred clients' money from client account to office account without instructions to do so and contrary to Rules 19(2) and 19(3) of the Solicitors Accounts Rules 1998.

And it is further alleged that he had been guilty of conduct unbefitting a solicitor in that he:

- (iii) Had utilised client funds for the purposes of other persons without authority;
- (iv) Had acted for two clients when he knew or ought to have known that a conflict of interest subsisted between them;

- (v) Had failed to advise the client whose interests were at risk of the existence of the conflict;
- (vi) Had certified that the terms of an agreement were approved by all his clients without verifying that approval.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd July 2003 when Andrew Miller appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent and the following documents which were handed up at the hearing:-

1. A letter addressed to the Applicant by the Respondent dated 24th April 2003;
2. A letter addressed to the Tribunal dated 1st July 2003 by David Warden solicitors of Washington, Tyne & Wear; and
3. The Respondent's conditional practising certificate (the latter document having been handed back to the Respondent at the end of the hearing).

At the conclusion of the hearing the Tribunal ordered that the Respondent Donald Keith Halling of Central Avenue, Tyne & Wear, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of The Law Society's Investigation Accountant to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 23 hereunder: -

1. The Respondent, born in 1950, was admitted as a solicitor in 1974. At the material times he practised as a partner in the firm of Patterson Glenton & Stracey solicitors at Coronation Chambers, 10 Coronation Street, South Shields, Tyne & Wear, NE34 1AZ. He resigned from that partnership on 2nd July 2003.
2. Upon due notice to the Respondent an Investigation and Compliance Officer of The Law Society (the ICO) carried out an inspection of the Respondent's firm's books of account commencing 17th September 2002. A copy of the ICO's Report dated 24th October 2002 was before the Tribunal.
3. A former partner of the Respondent explained to the ICO that in July 2002 the firm had investigated the Respondent's conduct of various files after discovering that he had written off a large amount of office disbursements.
4. The investigation revealed that the Respondent had utilised clients' funds, mainly from probate matters, to pay compensation to other unconnected clients who claimed to have suffered loss as a result of his negligent conduct of their cases. In addition the Respondent had utilised such funds to "replace" funds which had been misappropriated, ie the Respondent had been "teeming and lading".

5. The bulk of the funds had been misappropriated in relation to a compensation claim made by Mr and Mrs McC who had received approximately £450,000 from the Respondent. The Respondent had admitted the misappropriation.
6. The firm's own investigations revealed that the Respondent had instigated the unauthorised withdrawal or transfer of client funds totalling at least £889,153.10 from numerous clients' ledgers. Because some of these withdrawals and inter-client transfers had been actioned to replace funds which had already been misappropriated it was impossible to quantify the extent of the shortage on client bank account but it was accepted that a substantial shortage did exist on client bank account.
7. Upon a review of certain clients' ledgers, files and other documentation the ICO calculated that between the period 13th August 1999 and 26th June 2002 the Respondent had misappropriated a minimum of £432,179.45 from other unconnected clients.
8. Mr and Mrs McC had sought compensation of £385,100.56 in respect of the Respondent's failure to complete a lease in a commercial transaction.
9. The Respondent had sought to pay compensation of £450,000 to Mr and Mrs McC for his negligence as he considered this to be the amount due to them. He had done this under the pretext of having referred their claim to the firm's indemnity insurers. No such claim had been made.
10. The Respondent had misappropriated other clients' funds to compensate Mr and Mrs McC in the following ways:-
 - ◆ By making direct payments to Mr and Mrs McC;
 - ◆ By paying debts and other liabilities of Mr and Mrs McC;
 - ◆ By making contributions to the purchase price of three other properties for Mr and Mrs McC.
11. Between 13th August 1999 and 1st February 2002 fourteen withdrawals or inter-client transfers totalling £383,104.45 from nine separate clients' matters, unconnected with Mr and Mrs McC, had been made for the benefit of Mr and Mrs McC.
12. The Respondent accepted that he had misappropriated other clients' funds to compensate Mr and Mrs McC in the figure of £383,104.45. He had also paid £25,000 to Mr and Mrs McC from the sale of one of his own properties.
13. The Respondent acted in the administration of the estate of Mrs T Deceased who died on 4th August 2002. In a Will dated 26th July 1991 Mrs T appointed the Respondent and Mr C as executors and she left the residue of her estate to the Salvation Army.
14. On 9th January 2001 the District Probate Registry at Newcastle Upon Tyne issued a Grant of Letters of Administration which appointed the Respondent as the Personal Representative of the deceased.

15. Between 9th January 2001 and 7th February 2002 the client's ledger was charged with fifteen individual inter-client transfers or withdrawals totalling £146,014.67 representing the bulk of the assets of the estate. The sum of £146,014.67 had been misappropriated to settle compensation due to Mr and Mrs McC and other clients and also by way of reimbursement of those matters where monies had already been misappropriated.
16. On 26th July 2000 Mr S made complaint to the OSS that the Respondent had acted for him and another client where there was a conflict of interest and he had preferred the interests of the other client over those of Mr S.
17. The Respondent had acted for Mr S and Mr D in the sale of a casino. Mr S and Mr D ran the casino through a company and of its 115,000 ordinary £1 issued shares, Mr S owned 36,315 of those shares and Mr D owned the balance of 78,685.
18. The negotiations for the sale were carried out by Mr D with the purchaser. The Respondent received his instructions from Mr D.
19. On 2nd November 1999 the purchasers wrote to Mr D confirming that they offered to purchase the entire share capital of the company for £712,000.
20. Following further discussions with Mr D, the purchasers wrote again on 8th November 1999 confirming that the consideration was to be apportioned so that Mr D was to receive £6.56 per share but Mr S was to receive £5.40 per share.
21. It was Mr S's case that he completed the sale without having the opportunity to consider the documentation and without appreciating that his fellow shareholder had obtained preferential terms. The Respondent had not supplied Mr S with any written advice as to the terms and effect of the sale agreement prior to completion and, in particular, did not advise him of the difference in the price to be paid per share.
22. The transaction was duly completed.
23. In February 2001 Mr S issued proceedings against the Respondent's firm and Mr D. The proceedings were settled upon payment to Mr S by Mr D of £20,000 and a payment of £4,000 to Mr S by the Respondent's firm.

The Submissions of the Applicant

24. The Applicant put allegations (i), (ii) and (iii) on the basis that the Respondent had behaved dishonestly. He did not put the balance of the allegations on that basis. The Respondent had taken monies belonging to other unrelated clients in order to make compensatory payment to Mr and Mrs McC. He had then taken monies from clients unrelated either to Mr and Mrs McC or those clients whose money he had wrongly removed and had initially used to compensate Mr and Mrs McC. He had conducted the process of teeming and lading over a period of time. The Respondent had not informed his partners or the firm's insurers of his negligence and had sought to cover it up by making what he believed to be an appropriate level of compensation payment to Mr and Mrs McC.

25. It was the Applicant's case that the Respondent was conscious when carrying out those acts of impropriety. There was no allegation that the Respondent had derived a personal financial benefit from his misappropriation of client monies.
26. With regard to the conflict of interest, although the Respondent had been in written communication with Mr S he had supplied him with no written advice as to the terms and effect of the sale prior to completion and did not advise him of the difference in the price per share paid to the two shareholders. Completion was effected on 17th December 1999 but Mr S was not supplied with a copy of the sale agreement until the Respondent wrote to him by letter dated 2nd June 2000.
27. The disparity in the share price was unusual and ought to have put the Respondent on further enquiry. The Respondent had confirmed to the purchaser that the terms of the transaction had been agreed by both Mr S and Mr D. The Respondent had given that assurance recklessly as he had not relayed all of the terms of the proposed transactions to Mr S.
28. This case was a good example of a solicitor acting for two clients where there was a clear and serious conflict of interest between them.
29. The Applicant put allegations (i), (ii) and (iii) as being of a more serious order than the latter allegations because the misconduct involved had to be seen as being at the most serious end of the scale and the sums involved were very substantial.
30. The Applicant said that the Respondent had co-operated fully with him. All of the facts and the allegations had been admitted.

The Submissions of the Respondent

31. The Respondent confirmed that all of the facts and allegations were admitted.
32. With regard to the payments made to Mr and Mrs McC, the Respondent was ashamed. He had made a dreadful mistake. He said he looked back at those events on an almost hourly basis and had done so since he resigned from his partnership in July 2002.
33. The Respondent indicated that he was obliged to the Applicant for the way the case was put and, in particular, that he did not allege that the Respondent had behaved in a dishonest fashion in order to secure any personal financial benefit. That had not been the case.
34. When the Respondent realised that he had not completed a lease in a transaction of which he had conduct for Mr and Mrs McC he had realised that they were entitled to be compensated in a substantial sum and had believed that he would be able to effect such compensation from his personal resources. He had in fact paid to Mr and Mrs McC some £25,000 of his own and his wife's money which was a substantial sum for them. When he began to use monies held by the firm for other unrelated clients to effect further compensation payments to Mr and Mrs McC the Respondent had done so in the belief that he would be able to pay those monies back from his own funds. He had come to realise that such a belief was unsustainable but he had genuinely held it at the material time.

35. The Respondent said he was unable to explain why he sought to cover up his mistake in the first place. He accepted that he had taken a monumentally wrong course of action and he had regretted it every day since. He apologised to the Tribunal, the solicitors' profession and to his former partners.
36. With regard to the complaint of acting where there was a conflict of interest by Mr S, the transaction undertaken by the Respondent was the first one of that kind with which he had dealt. He had come to recognise that there was a conflict of interest between Mr S and Mr D and that he had not acted as he would have wished in that matter.
37. The Respondent invited the Tribunal to take into account the fact that he had been in private practice since 1974 with a previously unblemished disciplinary record.
38. The Respondent had not attempted to gain any personal financial benefit from these matters.
39. The Respondent had made no attempt to conceal any of the files in question.
40. The Respondent had co-operated fully with his former partners, their auditors and The Law Society.
41. The Respondent had made continued attempts to help to make good the missing money from his own limited capital resources. He needed to keep working in order to continue to discharge his financial obligations, not just to his former firm's insurers and his former partners but also to his wife and children who were of school age.
42. The Respondent had begun to work for the firm of David Warden in Washington, Tyne & Wear on 7th October 2002. The Law Society had granted a practising certificate to the Respondent subject to conditions. His work was monitored within that firm and was limited to domestic and some commercial conveyancing. He had fully complied with the conditions on his practising certificate.
43. The Respondent repeated his apology. He invited the Tribunal to accept that he was not an intrinsically dishonest man who was both unfit and incapable of continuing to practise as a solicitor. He invited the Tribunal to make an order that would permit him to continue to earn his living as a solicitor and he expressed a willingness to accept more stringent conditions upon any practising certificate granted to him.
44. In a letter addressed to the Tribunal from Messrs David Warden dated 1st July 2003 it was confirmed that the Respondent had become a popular member of staff both with existing employees and clients. The Respondent was supervised and his work was entirely satisfactory, he was described as undertaking his cases with enthusiasm and efficiency. That firm would welcome the opportunity of continuing to employ the Respondent.

The Findings of the Tribunal

45. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested. The Respondent himself accepted that he was conscious of the impropriety of his actions in using other clients' money to compensate Mr and Mrs McC and he realised that his proper course of action was to inform both his partners and the firm's insurers of his negligence. In such circumstances, the Tribunal could not avoid making a finding of dishonesty.
46. The Tribunal was in no doubt that the Respondent's actions had not been made with the intention of any personal financial gain.
47. The Tribunal gave the Respondent credit for having co-operated with all concerned, for his admissions and his clear and frank presentation of his case to the Tribunal and his sincere apology. The Tribunal also took into account the fact that the Respondent was happily and satisfactorily working in the employment of another firm of solicitors.
48. The Tribunal is mindful of the fact that sometimes its decisions may be viewed as harsh on individual respondents. The Tribunal, whilst taking into account an individual's circumstances, had to balance that individual's interests with its wider duties to protect the public and the good reputation of the solicitors' profession. Any member of the public instructing a solicitor is entitled to believe that that solicitor will behave with the highest standards of probity, integrity and trustworthiness and will exercise a proper stewardship over any monies held on behalf of clients. Any failure by a solicitor to act in accordance with those very high standards is a matter of the utmost seriousness and in order to protect the good reputation of the solicitors' profession, the Tribunal concludes that it is right that the Respondent be struck off the Roll of Solicitors.
49. It was also right that the Respondent should pay the costs of and incidental to the application and enquiry. The Respondent did not agree the figure put forward by the Applicant. The Tribunal therefore ordered that the costs of and incidental to the application and enquiry to include the costs of The Law Society's Investigation Accountant should be subject to a detailed assessment unless agreed between the parties.

DATED this 15th day of August 2003
on behalf of the Tribunal

T Cullen
Chairman