

IN THE MATTER OF VALERIE ELLA MARRS, solicitor

AND

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr A G Gibson (in the chair)  
Mr J C Chesterton  
Mr D Gilbertson

Date of Hearing: 27th April 2004

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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 Emma Grace solicitor and partner in the firm of Nelson & Co. Riverside West, Whitehall Road, Leeds, LS1 4AW on 22<sup>nd</sup> October 2003 that Valerie Ella MARRS of MARRS & Co., 716 Christchurch Road, Bournemouth, Dorset, BH7 6BZ (now of Bramble Lane, Highcliffe, Dorset) 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 she had been guilty of conduct unbecoming a solicitor in that she:-

- 1) Left her Practice unsupervised and unattended, contrary to Practice Rule 13 Solicitors Practice Rules 1990;
- 2) Made improper withdrawals from client bank account contrary to Rule 22 Solicitors Accounts Rules 1998;

- 3) Failed to pay professional disbursements promptly contrary to Rule 19(1)(b)(ii) - Solicitors Accounts Rules 1998;
- 4) Failed to keep full and accurate books of account to show dealings with client money contrary to Rule 32 Solicitors Accounts Rules 1998;
- 5) Failed to remedy said breaches contrary to Rule 7 Solicitors Accounts Rules 1998;
- 6) Failed to consider conflicts of interest and accepted a loan from a client contrary to Practice Rule 11 of the Solicitors Practice Rules 1990;  
[typographical error amended with the consent of the Tribunal]
- 7) Failed to deal promptly and substantively with correspondence from the OSS contrary to Principle 30.04 of the Guide to the Professional Conduct of Solicitors (8th Edition);
- 8) Failed to comply timeously with a decision of an Adjudicator dated 13 December 2002.  
[as amended with the consent of the Tribunal]

The application was heard at the Court Room, 3<sup>rd</sup> floor Gate House, 1 Farringdon Street, London EC4M 7NS on 27<sup>th</sup> April 2004 when Mark Barnet solicitor employed by the Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV35 5AE appeared on behalf of the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal contained the admissions of the Respondent. An Affidavit of Service dated 5<sup>th</sup> January 2004 was submitted to the Tribunal at the hearing on behalf of the Applicant. The Tribunal was satisfied that service had been duly effected upon the Respondent.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal Order that the Respondent, Valerie Ella Marrs of Bramble Lane, Highcliffe, Dorset, BH23 5NB (formerly of 716 Christchurch Road, Bournemouth, Dorset, BH7 6BZ), solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of April 2004 and they further Order that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

**The facts are set out in paragraphs 1 to 29 hereunder:-**

1. The Respondent born in 1961 was admitted as a solicitor in 1992 and her name remained on the Roll of solicitors.
2. The Respondent carried on practice as a principal in the firm of Marrs & Co., 716 Christchurch Road, Bournemouth, Dorset BH7 6BZ.

3. In February 2002 the Law Society received a telephone call from a firm of solicitors who had been attempting to contact the Respondent and had received an ansaphone message saying that the Respondent was on holiday until 21<sup>st</sup> February 2002. Following this, the Respondent indicated to the OSS that she had been on holiday and that there had been no cover during this time but the office had been closed. A formal explanation was sought from the Respondent for this by way of a letter dated 25<sup>th</sup> April 2002. No reply was received from the Respondent and on 18<sup>th</sup> July 2002 the OSS wrote again to the Respondent seeking her response to this letter and reminding her of her professional duty to correspond with the OSS. No reply was received to this letter. The Respondent had not put forward an explanation for this to the OSS.
4. On 28<sup>th</sup> January 2002 an inspection of the Respondent's books of accounts and other documents was begun by the OSS. On 31<sup>st</sup> July 2002 a Report was produced following this inspection. This Report revealed breaches of the Solicitors Accounts Rules 1998 and Solicitors Practice Rules 1990, showing in particular:
- (a) improper withdrawals from client bank account;
  - (b) unpaid professional disbursements;
  - (c) failure to maintain books of account;
  - (d) failure to pay professional disbursements promptly;
  - (e) an unauthorised loan and late registration of title in relation to the sale and purchase of property for Mr and Mrs L.
5. In explanation for the accounting problems, the Respondent told the inspector that she had always dealt with the accounting duties but she was in fact not numerate and had not understood the reconciliations her accounting system produced. A total cash shortage of £33,976.52 was shown as at 30<sup>th</sup> November 2001, which was repaid by the Respondent during January to June 2002. This arose from a number of sources as set out below.

Unallocated transfers from client to office bank account – a total of £18,620.02

6. During 1<sup>st</sup> March 2001 to 30<sup>th</sup> November 2001, various amounts had been transferred from client to office bank accounts – these were not allocated to any specific client ledger account but merely entered on a ledger account headed “Marrs & Co”. The Respondent said that this account was set up to take account of such transfers and was a clearing account for fees and disbursements to which the firm was entitled. However, only £6,307.37 had actually been allocated – leaving a debit balance of £18,620.03. This had since been rectified and the Respondent said that the picture was “distorted”.

Debit balances totalling £8,004.87

7. Thirteen client ledger accounts showed a debit balance as at 30<sup>th</sup> November 2001. The largest of these, £2,582.50, was caused by the bill being drawn on twice in error.

Unallocated client account payment - £3,040

8. On 13<sup>th</sup> September 2000 a client account payment in this sum was made – but no allocation to any specific client ledger was made. A ledger entry stated “medical fees unallocated” and thus a debit balance of £3,040 was created. The Respondent stated that this represented medical report fees for a number of files, but she was unable to provide details as to which.

Funds in respect of professional disbursements

9. The Report showed that various amounts were received in respect of professional disbursements which were lodged in office bank account and then not paid for some time. £2,375.27 was received in February 1999. The first payment from this was made at the end of July 1999 and the last two paid on 10<sup>th</sup> June 2002, over three years later. The Respondent stated that the reason for this delay was a difficult pregnancy in 1999 which had resulted in her becoming behind with her paperwork.
10. During December 2001 a further shortage of some £7,272.47 arose due to a transfer from client to office account in respect of counsel’s fees and also an over transfer of costs. This was remedied over the next five months.
11. The Report also revealed an unauthorised loan from a client and a late registration of title. The inspector reported that the Respondent had acted for her sister and her husband on the sale and purchase of property as well as acting for the HSBC in connection with this. Although no costs were charged, the Respondent received the total sum of £8,220.83 from the client, which the Respondent stated was a loan. No written evidence of authority from the client to borrow this money was received. Completion took place on 6<sup>th</sup> April 2001 however stamp duty was not paid until 17<sup>th</sup> May 2002. Registration had only been applied for at the time of the inspection and not effected at that time. The Respondent blamed this on the complicated title and the need to wait for other transfers to arrive, but the Report indicated that these had arrived in her offices approximately two months after completion. The inspection found that the initial priority period had expired on 18<sup>th</sup> May 2001 and a new search was not conducted until 8<sup>th</sup> May 2002. The Respondent admitted she had not complied with the HSBC’s post completion instructions to “make application for registration at the appropriate District Land Registry immediately following completion of the mortgage and in any event within the priority period conferred by the search”.
12. The Report was sent to the Respondent by letter on 16<sup>th</sup> August 2002. The Respondent was invited to put forward explanations for the various matters raised in the Report. She was requested to reply within fourteen days of the date of the letter. No reply was received during this time and on 17<sup>th</sup> September 2002 a further letter was written to the Respondent pointing out the Respondent’s professional duty to respond and seeking a reply in eight days.
13. On 25<sup>th</sup> September 2002 the Respondent replied to the OSS with her comments on the Forensic Investigation Report. The Respondent stated in summary that her practice closed on 31<sup>st</sup> May 2002, that she never intended to work as a sole principal again, that when she was recovered from her illness she would ensure she updated herself on

the Solicitors Accounts Rules and that the errors which the Report revealed and for which the OSS sought explanation were caused by illness.

14. With regard to the transaction with her sister, again the Respondent blamed ill health for the delays and agreed that, with hindsight, she should have obtained written consent from her sister to the loan. The Respondent stressed that her lack of numeracy and ill health were not the root causes of the problem, but no funds were at any time “missing” or improperly used and that no losses were caused to clients.
15. Following this letter, the matter was sent for formal adjudication, and the Respondent was invited to put forward any representations within fourteen days of the date of the letter informing her of this.
16. On 16<sup>th</sup> December 2002 the Adjudicator considered both the matters raised in the Report and also the matter of her failure to supervise and to respond to the OSS. The Adjudicator resolved to refer the Respondent’s conduct to the Tribunal and resolved to impose immediate conditions of the Respondent’s Practising Certificate, namely that she might act as a solicitor only in employment which was approved by the OSS. A supplemental decision was made to stand over the matter of costs until the matter had been dealt with by the Tribunal.
17. The Adjudicator’s decision was sent to the Respondent by way of letter on 18<sup>th</sup> December 2002 informing the Respondent that she might apply for a review of the decision if she so wished. No such application was made.

#### Inadequate Professional Service

18. On 31<sup>st</sup> January 2000 the Society received a complaint about the Respondent in relation to a personal injury claim. That letter was sent to the Respondent on 14<sup>th</sup> February 2000 with a letter seeking the Respondent’s report on the matter within twenty eight days.
19. Having received no response within that time the OSS chased the Respondent for a response on 15<sup>th</sup> March 2000. This was then followed up by a telephone call on 4<sup>th</sup> April 2000 when a message was left about the necessity of a reply.
20. The Respondent replied on 4<sup>th</sup> April 2000 confirming that she had contacted the complainant and that the complainant was happy for her to proceed with the case. Following some further correspondence it was agreed that the complainant’s file would be closed temporarily whilst the litigation proceeded.
21. On 1<sup>st</sup> September 2001 the complainant contacted the OSS again, following completion of her claim and an award made in her claim. She alleged inadequate conduct of her case which she believed resulted in a lower award being made than was justified. She enclosed a letter she had received from the insurers and also a copy of counsel’s advice. The complainant then wrote again with further details of the costs involved in the case, which she alleged were in the main due to telephone calls she had made.

22. The OSS wrote to the Respondent on 26<sup>th</sup> November enclosing the most recent letter and seeking her response to the complaints identified in that letter, mainly delay and failure to inform. The Respondent was asked to respond by 10<sup>th</sup> December 2001.
23. When no response was received during this time, the OSS chased up the Respondent by letter dated 19<sup>th</sup> December 2001. Attempts were made to conciliate the matter which failed and the OSS then wrote to the Respondent on 7<sup>th</sup> February 2002 seeking a response to outstanding matters by 25<sup>th</sup> February 2002. No response was received and the Respondent was written to again by the OSS on 19<sup>th</sup> March 2002. The OSS then followed this up with a request for the Respondent's file in order to investigate the matter, which was sought by 4<sup>th</sup> April 2002.
24. As no response was received and the file was not sent the OSS wrote to the Respondent on 19<sup>th</sup> April confirming that her failure to respond was now to be treated as a matter of professional conduct unless she responded within ten days. The Respondent sent her file and comments to the OSS on 20<sup>th</sup> May.
25. The OSS then prepared a Report on the complaint and a copy was sent to the Respondent for her comments on 17<sup>th</sup> September. The complainant also received a copy of the Report and sent comments on that Report on 28<sup>th</sup> September 2002. These were sent to the Respondent for her information and the matter was then passed to an Adjudicator.
26. On 13<sup>th</sup> December 2002 the Adjudicator considered the matter and found that the services provided were inadequate. The Adjudicator directed that the Respondent's firm should pay the complainant the sum of £750 within seven days following the expiry of the review period.
27. This decision was sent to the Respondent on 20<sup>th</sup> December and she was informed she had until 6<sup>th</sup> January 2003 to apply for a review. No application was made and the Respondent was notified on 13<sup>th</sup> January 2003 that the decision was therefore final and she must comply with it within seven days.
28. On 5<sup>th</sup> February 2003 the OSS chased up the Respondent again, confirming that unless she complied with the direction within fourteen days of the date of the letter, her conduct would be referred to the Tribunal. No such payment was made, and thus on 26<sup>th</sup> February 2003 the Adjudicator decided to refer the Respondent's conduct to the Tribunal unless the Respondent complied with the decision within fourteen days of being notified of that decision.
29. The Respondent was notified of this decision on 7<sup>th</sup> May 2003. At the date of the Applicant's statement the payment of the directed sum of compensation remained outstanding. Payment was made to the Applicant on 9<sup>th</sup> January 2004 and forwarded to the complainant on 30<sup>th</sup> January 2004.

**The Submissions on behalf of the Applicant**

30. The Respondent had stated on the prelisting questionnaire which she had returned to the Tribunal that she was not disputing the allegations. Further in her letter of 26<sup>th</sup> April 2004 to the Tribunal she had admitted the allegations.
31. Dishonesty was not alleged against the Respondent but the matters alleged were serious.
32. If a sole practitioner left his or her office it was imperative that suitable arrangements were put in to supervise clients' affairs. There had been a period of ten days when the Respondent's practice had been left unattended and unsupervised.
33. It was essential that solicitors complied with the Accounts Rules which were intended to separate client and solicitor money.
34. The loan from the Respondent's sister had been inadvisable but to the Respondent's credit she had delayed paying the stamp duty and Land Registry fees until she could do so from her own resources. She had not attempted to use the money of other clients.
35. It was essential that solicitors responded to correspondence from the OSS.
36. The Respondent had consistently attributed her problems to her ill health. She had not submitted any medical evidence but there was no evidence to contradict her assertion. The problems arising from her ill health had caused her to close her firm.

**The Submissions of the Respondent**

37. The Respondent's submissions were contained in her letter to the Tribunal of 26<sup>th</sup> April 2004.
38. In that letter the Respondent said that she had admitted the allegations and in relation to costs this had saved time and expense.
39. She had accepted that there had been errors shown by the accounts inspection but said that there was no dishonest intent and no one had suffered financial loss. At the time she had been suffering with undiagnosed depression and she was still receiving treatment. The Respondent said that she would be unlikely to be in a position to work for some time.
40. The Respondent expressed regret that the complainant had felt aggrieved and confirmed that she had paid the award made by the Adjudicator.

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

41. The Tribunal found the allegations to have been substantiated indeed they were not contested.
42. While no dishonesty was alleged against the Respondent and none had been found a substantial number of allegations of a serious nature had been substantiated against the Respondent. Although the Respondent had not submitted any medical evidence the Tribunal accepted her submissions that these matters had arisen as a result of her ill health. It was essential that solicitors were able and did comply with the Solicitors Practice Rules and the Solicitors Accounts Rules which were there for the protection of the public. It was also essential that solicitors correspond with their regulatory body when required to do so and comply with the decisions of Adjudicators so that the public could be reassured that the profession was being properly regulated. It appeared that the Respondent's ill health had meant that she was not able to comply with these essential requirements. She had indicated that she was still receiving treatment and would not be in a position to work at all for some time. Given the Respondent's ill health the Tribunal considered the appropriate sanction was to suspend the Respondent from practice for an indefinite period. Should she wish to return to practice she would need to provide a Report from a properly qualified medical specialist demonstrating that she had recovered from that ill health.
43. The Tribunal made the following order:-

The Tribunal Order that the Respondent, Valerie Ella Marrs of Bramble Lane, Highcliffe, Dorset, BH23 5NB (formerly of 716 Christchurch Road, Bournemouth, Dorset, BH7 6BZ), solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of April 2004 and they further Order that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

Dated this 3rd day of August 2004  
On behalf of the Tribunal

A G Gibson  
Chairman