

IN THE MATTER OF NIGEL GORDON COX, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr J P Davies
Mr M C Baughan

Date of Hearing: 16th June 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Ian George Miller, solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London WC1R 5JF on the 14th of December 2004 that Nigel Gordon Cox of Yardley Hill, Wells, Somerset, a 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.

At the opening of the hearing the Applicant sought to withdraw allegation 5. The Respondent agreed and the Tribunal consented thereto.

The allegations made against that the Respondent were:-

- 1) He was guilty of conduct unbecoming a solicitor in that he made or caused to be made entries in the client account ledger of a Mr B and/ or a Ms S which he knew or ought to have known were misleading;
- 2) He failed to maintain proper accounting entries contrary to Rule 1 and Rule 32 of the Solicitors Accounts Rules 1998 ("the SAR");

- 3) He withdrew funds in excess of that held on client account contrary to Rule 22 of the SAR;
- 4) He failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 of the SAR;
- 5) [Withdrawn]
- 6) He was guilty of conduct unbecoming a solicitor in that he acted on behalf of the vendor and purchaser in a property transaction without informing his lender client contrary to Practice Rule 6(3)(b).

The application was heard at the Court Room, 3rd Floor at Gate House, 1 Farringdon Street, London EC4M 7NS when Ian George Miller appeared as the Applicant and the Respondent was represented by Craig Barlow of Counsel, instructed by Bindman & Partners of 275 Gray's Inn Road, London WC1.

The evidence before the Tribunal included the admissions of the Respondent. The Tribunal was invited to consider a bundle of written testimonials in support of the Respondent.

The Tribunal was invited also to consider judgments in the Divisional Court and in the Court of Appeal relating to the solicitor Respondent Bultitude ([2004] EWHC 1370 (Admin) and [2004] EWCA CIV 1853).

Although the Respondent made admissions he denied that the postings made by the Respondent of payments as being received from the Inland Revenue when they had not been so received amounted to dishonesty.

The Tribunal decided (and both parties agreed) that it should hear the whole of the Applicant's case and the whole of the Respondent's case and then to retire to make a finding as to whether the admitted allegations amounted to dishonest conduct on the part of the Respondent.

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

The Tribunal orders that the Respondent, Nigel Gordon Cox of Yardley Hill, Wells, Somerset solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,250.

The facts are set out in paragraphs 1 to 8 hereunder:-

1. The Respondent, born in 1955, was admitted as a solicitor in 1980. From 4th March 2002 until the 31st May 2004 the Respondent practised in partnership with a partner under the name of Dewey & Cox. The partner's conduct had not been referred to the Tribunal.
2. A forensic investigation officer of The Law Society (the FIO) began an inspection of Dewey & Cox on the 23rd March 2004. The FIO's report dated 27th April 2004 was before the Tribunal. It raised concerns about two client matters, B and S.

Client: B

3. In 1993 the Respondent borrowed £55,000 from Mr B subject to written terms, one of which was that the Respondent was to pay to Mr B £1,600 per quarter in respect of interest. The loan was made by Mr B who was a friend and client of the Respondent. It was not alleged that there was a breach of any rule relating to a solicitor's borrowing from a client.
4. Mr B was resident in Majorca. He owned commercial property in Bath and rent was collected by Dewey & Cox on his behalf. The rental income of the commercial property together with the interest payments by the Respondent were used to pay the UK bills of Mr B and to provide him with funds when he visited the UK.
5. Between the 1st March 2002 and the 17th February 2004 six payments totalling £11,200 were credited to the client ledger of Mr B purportedly in respect of interest payments by the Respondent. These payments did not correspond to any payments made into the client account by the Respondent. The true position was that the client's ledger was continually overdrawn from 1st May 2002 to the 26th March 2004.

Client: S

6. The Respondent acted on behalf of Ms S on the sale of her property and the related purchase of another property in Bath. The vendors were Ms S's parents. The Respondent acted also in connection with the parents' purchase of a house.
7. In both purchases the purchase price was £395,000. After completion stamp duty of £15,800 (4%) was paid to the Inland Revenue for each property. The client account cheques were posted to the ledger on the 18th February 2004 and cleared the firm's client bank account on the 25th February 2004. Owing to a miscalculation the Inland Revenue had been overpaid by £7,900 as the applicable stamp duty rate was 3%.
8. On the 27th February 2004 two receipts of £3,950 (and totalling £7,900) were posted to the credit of the ledger of Ms S relating to the purchase. There had been no receipt from the Inland Revenue.

The Submissions of the Applicant

9. The Applicant put the allegations on the basis that the Respondent caused false entries to be made in the client ledgers of both Mr B and Ms S. The effect of such false entries was that the accounts were in breach of Rule 1 and Rule 32 of the Solicitors Accounts Rules as they did not accurately reflect the underlying client accounting position. Additionally, the two client accounts were overdrawn in breach of Rule 22.
10. The Respondent had caused the entries to be made and he not promptly rectify the breaches.
11. In the case of Mr B six payments totalling £11,200 had been credited to the client ledger of Mr B when the Respondent knew that those sums of money had not actually been paid into client account. The Respondent knew that bank reconciliations carried out during the relevant period were false. The true position was that Mr B's client ledger had been continually overdrawn for a period of nearly two years.

12. In the matter of Ms S the postings made did not reflect any actual receipt from the Inland Revenue but had the effect of disguising what would otherwise be a debit balance on the client ledger.
13. The Applicant put his case on the basis that the Respondent had acted with conscious impropriety and he invited the Tribunal to consider the judgments relating to the solicitor Bultitude both in the Divisional Court and the Court of Appeal.
14. In particular, in the Divisional Court judgment it was said “such is the sanctity of the Rule in the Solicitors’ Profession of preserving a strict separation in their accounts between their own and their clients’ funds that any deliberate and knowing breach by a solicitor of it, as in this case, is dishonest and seriously so”.
15. In the Court of Appeal judgment it was accepted that the test to be applied when deciding dishonesty was that formulated by the House of Lords in *Twinsectra Ltd v Yardley* (2002) [2002] UKHL 12(2)(164) namely whether “First, did [the Respondent] act dishonestly by the ordinary standards of reasonable and honest people and if so, secondly was he aware that by those standards he was acting dishonestly”.
16. The Tribunal was invited to conclude that the Respondent by those tests had acted dishonestly in both the client B and the client S cases.

The Submissions of the Respondent

17. In the matter of the client S, the FIO’s report did not provide sufficient evidence to demonstrate dishonesty. In order to fulfil the subjective component of the “Twinsectra test” the Applicant had to show that what the Respondent did would be regarded as dishonest in the eyes of ordinary men. Obviously it had been wrong to record the receipt into client account without making a transfer from office account. That would have been the right and the easy thing to do. As far as the Respondent was concerned there was no question of his defrauding clients. He had made a genuine mistake.
18. At the time the Respondent had been responsible for the bookkeeping entries and the preparation of reconciliations. He was therefore aware of the overall position.
19. With regard to the client S ledger the Respondent said he had made a "calculated guess" that the monies overpaid to the Inland Revenue would be received very quickly.

The Tribunal’s Decision on the question of Dishonesty in respect of client S

20. The Tribunal concluded that the entries made by the Respondent on the client ledger of S were false entries and he knew that they were incorrect at the time that he made them. It was the Respondent’s case that he made the entries in anticipation of the receipt of the monies rather than upon actual receipt. Whilst that might well be an explanation for the Respondent’s actions the fact remained that this part of the books of account on its face was inaccurate to the knowledge of the Respondent. He had in B’s case recorded receipts of money when that money had not been received. This

was a flagrant and intentional breach of the rules as it was the Respondent himself from whom the payments should have been received.

21. The Respondent accepted that he was responsible for effecting bank reconciliations. In order that client bank account be reconciled with a list of liabilities to clients he would have had to take into account that there was on the face of it an actual shortage of client funds in both Mr B's and Ms S's ledgers and he therefore knew that such reconciliations could not accurately have reflected the true state of affairs and would untruthfully have shown that the Respondent's client account held sufficient money fully to discharge all client liabilities.
22. The Tribunal is of the view that making false entries in books of account is dishonest by the standards of any honest and competent solicitor. The Tribunal was in no doubt that the Respondent must have been aware that was the case. In an isolated case the crediting of money before receipt of overpaid stamp duty might be attributable to mistake or honest error: This was not such a case and the Tribunal found the allegation of dishonesty proved to the necessary standard in relation to client S.
23. The Respondent had admitted the allegations in relation to the client B and the facts in relation to client S. The Tribunal finds all of the allegations to have been substantiated and unquestionably the Respondent acted dishonestly in connection with the matter of Mr B. He had not made the personal payments to the client ledger which he recorded as having being made. This was a matter of which he had a direct and close personal knowledge. It was not an oversight. The Respondent directly benefited from the action to the extent that he had not funded the payments recorded as having been received.

The Respondent's mitigation

24. The Tribunal was invited to give due weight to the wealth of written testimonials put in support of the Respondent. All of the testimonials spoke highly of the Respondent's competence and integrity as a solicitor.
25. The Respondent customarily held very substantial sums of money on behalf of clients and had not been guilty of any impropriety in connection with the handling of those very large sums.
26. The Respondent's actions, the subject of the disciplinary allegations, had not been the subject of any police enquiry. There had been no loss to any client. The shortfalls of clients' money in the matters of Ms S and Mr B had been fully rectified.
27. The Respondent had hitherto enjoyed an exemplary career and it would be an ignominious end if he were to be struck off the Roll. In all the circumstances the Tribunal was urged to give due consideration to the imposition of a less serious sanction.

The Tribunal's Sanction and its Reasons

28. In the matter of the client B the Tribunal found that the Respondent had been thoroughly dishonest. On the face of the books of account he had demonstrated that he personally had made payments of money due to Mr B when he knew such

payments had not been made. The Tribunal did not believe that the failure to make such payments could be characterised as forgetfulness or a mistake. The Respondent kept the books himself and every time he wrote that such a payment had been made he would have been fully aware of the fact that on each occasion payment had not been made and that he had not made payments on earlier occasions. The Respondent did know what he was doing and could not fail to realise that his action amounted to conscious impropriety that would be regarded as dishonest by ordinary honest and competent solicitors. In relation to client S the conduct was consciously improper but might have been excusable in different circumstances.

29. Having made a finding that the Respondent acted dishonestly, in the interests of protecting the public and good reputation of the solicitors' profession the Tribunal considered it was right to order that the Respondent be struck off the Roll of solicitors and further ordered him to pay the costs of and incidental to the application and enquiry in the fixed sum which had been agreed between the parties of £4,250 inclusive.

Dated this 9th day of December 2005
On behalf of the Tribunal

AH Isaacs
Chairman