

IN THE MATTER OF IAN DUDLEY SHAW and  
ANTHONY JOHN NICHOLAS BRITNELL, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr R B Bamford (in the chair)  
Mrs K Todner  
Mr G Fisher

Date of Hearing: 4th October 2005

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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 Law Society by Katrina Elizabeth Wingfield, solicitor and partner in the firm of Penningtons, Bucklersbury House, 83 Cannon Street, London EC4N 8PE on 13<sup>th</sup> January 2005 that Ian Dudley Shaw of London Road, Waterlooville, Hampshire (now of Woodville Drive, Southsea) and Anthony John Nicholas Britnell of Seaview Avenue, Fareham, Hampshire (now of Copnor Road, Southsea), solicitors, 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 fit.

The allegations against the Respondents were that they had been guilty of conduct unbefitting a solicitor, namely:-

- (i) that they failed to deliver their Accountant's Report for the year ending 31<sup>st</sup> July 2003 in breach of section 34 of the Solicitors Act 1974 (as amended);
- (ii) that their books of account were not in compliance with the Solicitors Accounts Rules namely:
  - (a) they had failed to remedy breaches upon discovery (Rule 7);

- (b) they had withdrawn monies from client account in excess of monies held on behalf of the particular client (Rule 22);
- (c) they had failed to keep accounting records for client accounts in breach of Rule 32;
- (d) they failed to carry out reconciliations in accordance with Rule 32.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4<sup>th</sup> October 2005 when Katrina Elizabeth Wingfield appeared as the Applicant and the Respondents did not appear and were not represented.

The evidence before the Tribunal included the admissions of Mr Britnell (“the Second Respondent”) and the admission of the facts by Mr Shaw (“the First Respondent”). During the hearing the Applicant submitted a complete copy of a letter from the First Respondent to The Law Society received on 9<sup>th</sup> July 2004, a copy of part of which was contained in the Applicant’s bundle.

**At the conclusion of the hearing the Tribunal made the following orders:-**

The Tribunal ORDER that the Respondent, Ian Dudley Shaw of Woodville Drive, Southsea, (formerly of London Road, Waterlooville, Hampshire), solicitor, be STRUCK OFF the Roll of Solicitors and it further orders that he be jointly and severally liable with the Respondent Anthony John Nicholas Britnell to pay the legal costs of the application and enquiry fixed in the sum of £2,156.42 together with 50% of the costs of the Investigation Accountant of The Law Society amounting to £2,480.54.

The Tribunal ORDER that the Respondent, Anthony John Nicholas Britnell of Copnor Road, Southsea (formerly of Seaview Avenue, Fareham, Hampshire), solicitor, be STRUCK OFF the Roll of Solicitors and it further orders that he be jointly and severally liable with the Respondent Ian Dudley Shaw to pay the legal costs of the application and enquiry fixed in the sum of £2,156.42 together with 50% of the costs of the Investigation Accountant of The Law Society amounting to £2,480.54.

**The facts are set out in paragraphs 1 to 18 hereunder:-**

1. The First Respondent, born in 1948, was admitted as a solicitor in 1975. The Second Respondent, born in 1945, was admitted as a solicitor in 1971. The names of both Respondents remained on the Roll of Solicitors although they were at the time of the hearing suspended from practice.
2. The Respondents carried on practice in partnership with each other under the style of Shaw & Britnell from addresses at 238A London Road, Waterlooville, Hampshire and 257 Milton Road, Portsmouth.
3. The Accountant’s Report for the year ending 31<sup>st</sup> July 2003 was due to be submitted by 31<sup>st</sup> January 2004. Accountants, Messrs Murray, McIntosh, O’Brien, requested an extension of time for filing the Report initially for one month, then for a further month, then until 31<sup>st</sup> May 2004. They stated that a new computer system had been introduced and that they were experiencing difficulties in reconciling balances on the new and old systems. A further extension was sought until 31<sup>st</sup> July 2004 by fax dated 28<sup>th</sup> May 2004.

4. The requests for an extension were considered by an Adjudicator on 19<sup>th</sup> July 2004 when extensions were granted until 31<sup>st</sup> May 2004. The Adjudicator directed that the matter be referred to the Tribunal in the event that the Accountant's Report was still outstanding 28 days after the notification of the decision. The Respondents were notified of the decision under cover of letters dated 21<sup>st</sup> July 2004.
5. The Respondents themselves had provided no explanation regarding the situation. The Accountant's Report remained outstanding.
6. An inspection of the books of account of the Respondents commenced on 1<sup>st</sup> June 2004. A copy of a report setting out the findings of the Forensic Investigation Officer dated 30<sup>th</sup> June 2004 was before the Tribunal.
7. The Investigation Officer discovered that the Respondents had failed to carry out regular reconciliations between client liabilities, the client cash account and bank statement balances since 1<sup>st</sup> August 1998, and failed to maintain accurate books of account/ accounting records. As a consequence it was not practicable to compute the partners' liability to clients. The Investigation Officer did however identify a minimum cash shortage as at 30<sup>th</sup> April 2004 in the sum of £56,888.89 in respect of two client matters, details of which were set out in the report.

Mr and Mrs H- shortage of £35,065.42

8. The firm (the Second Respondent) acted for the above clients in the sale of a property. On 12<sup>th</sup> November 2003 an overpayment was made to the clients which was queried by the clients on 17<sup>th</sup> November. The firm requested repayment by fax on 18<sup>th</sup> November 2003. The shortage was partly rectified by the clients repaying £20,000 on 26<sup>th</sup> April 2004 and a further £10,000 on 7<sup>th</sup> May 2004.
9. The Second Respondent admitted to the Investigation Officer that he had not complied with the requirement to remedy breaches of the Solicitors Accounts Rules on discovery. He stated that this was "one colossal cock-up" on his part and that "we didn't do what we should have done from the office account". The First Respondent was unable to explain to the Investigation Officer why this breach of the Solicitors Accounts Rules had not been remedied promptly on discovery but did say that he did not have "that sort of money to put in".
10. According to the client ledger account, the outstanding shortage of £5,065.42 was rectified on 24<sup>th</sup> May 2004 by a transfer of funds from office account to client account. However, this transfer was not reflected in the firm's client and office account bank statements. When questioned about this on 16<sup>th</sup> June 2004 the First Respondent said, "It doesn't look as though the transfer's been done yet. I can't explain why". When asked as to whether he agreed there was still a shortage of £5,065.42 in this matter, he replied, "Yes, well there must be if I haven't done it".

Mrs D – shortage of £21,823.47

11. The firm (the First Respondent) acted for Mrs D in matrimonial proceedings. A cheque for £25,000 was received on behalf of the client but was paid into the client bank account as £2,500 and the firm's client account was credited and the payer's bank account debited by that amount. The First Respondent paid to Mrs D on 12<sup>th</sup> March 2004 the sum of £24,823.47 which placed the client ledger account in debit by £21,823.47.
12. Having identified the overpayment the First Respondent queried the situation with the payer on 14<sup>th</sup> April 2004. The shortage was rectified by an amount of £22,500 being credited to the firm's client bank account on 7<sup>th</sup> May 2004.
13. The Investigation Officer found that a computerised accounts package had been introduced during 2001/2002 although the First Respondent continued to maintain a manual system until January 2004. The First Respondent was unable to produce any client account reconciliations.
14. The Investigation Officer made contact with the firm's accountants who provided information and a schedule indicating their attempts to reconcile the client bank account with liabilities to clients in respect of the previous financial year. The Investigation Officer summarised those figures at paragraph 27 of his report and identified at paragraph 28 discrepancies in receipts and payments.
15. The Investigation Officer noted in his report that the reporting accountants informed him that the accounting records were "not reliable at all".
16. Since 1<sup>st</sup> August 1998 all of the Accountant's Reports delivered to The Law Society in respect of the firm had been qualified.
17. Copies of the report were sent to both Respondents on 2<sup>nd</sup> July 2004. The First Respondent replied by letter received on 9<sup>th</sup> July 2004. The Second Respondent did not reply.
18. On 9<sup>th</sup> July 2004 a decision was made to intervene into the remains of the practice.

**The Submissions of the Applicant**

19. The Applicant had served the appropriate Notices in respect of the documentation.
20. The Tribunal was referred to the bundle of correspondence between the Applicant and the Respondents between 20<sup>th</sup> January 2005 and 30<sup>th</sup> September 2005. The Second Respondent had made clear admissions in his letter of 19<sup>th</sup> May 2005 and in his letter of 11<sup>th</sup> July 2005 had indicated that he would not be attending the hearing. The First Respondent had, in the submission of the Applicant, in his letter of 26<sup>th</sup> February 2005 made admissions as to the facts upon which the allegations were based. He had confirmed in a telephone conversation that he would not attend the hearing.

21. In the absence of the First Respondent the Applicant thought it right to bring to the attention of the Tribunal his statement in his letter of 26<sup>th</sup> February 2005 that he had freely advised the Investigation Officer of the matters giving rise to the cash shortage.
22. Asked by the Tribunal why these matters had not been brought before the division of the Tribunal which heard allegations against the Respondents in March 2004 the Applicant said that while there were problems with the accounting records known at that time, the matters of Mr and Mr H and Mrs D had not come to light until after that hearing.
23. Schedules of costs had been served upon the Respondents.

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

24. The Second Respondent had admitted the allegations and the Tribunal found them substantiated. The First Respondent had admitted the facts upon which the allegations were based and for the avoidance of doubt having carefully considered the written comments of the First Respondent contained in the documentation, including his letter of 26<sup>th</sup> February 2005, the Tribunal was satisfied that the First Respondent's conduct was conduct unbecoming a solicitor and that the allegations were substantiated.

### **Previous appearance of the Respondents before the Tribunal on 23<sup>rd</sup> March 2004**

25. On 23<sup>rd</sup> March 2004 the following allegations were substantiated against the Respondents, namely that they had been guilty of conduct unbecoming a solicitor in that:-
  - (i) they acted in breach of the Solicitors Accounts Rules 1998 (Rule 22);
  - (ii) they acted where their own interests conflicted with the interests of a client (Principle 15.04);
  - (iii) they acted outwith a client's instructions in breach of Principle 12.08;
  - (iv) they failed to comply with the Solicitors Indemnity Insurance Rules 2000 (Rules 4, 5, 7 and 8) and the Solicitors Indemnity Insurance Rules 2001 (Rules 5, 11, 21 and 22);
  - (v) they failed to deal promptly and substantively with correspondence from the OSS in breach of Principle 30.04;
  - (vi) by virtue of each of the aforementioned they were guilty of conduct unbecoming a solicitor and had brought the profession into disrepute.
26. The Tribunal on that occasion said:-
  - “53. The Tribunal had listened with concern and dismay to the oral evidence of the First Respondent. The First Respondent had used money entrusted to him many years previously under a Power of Attorney in order to get his firm out

of the difficulties caused by an accidental overpayment. The duties on the partners in those circumstances was to cover the resulting shortfall on client account from their own resources. As they could not exceed their overdraft limit the First Respondent had instead used another unconnected client's funds. He had produced no evidence (even when asked by the Tribunal) to show that he had even a general authority from Miss K to use her funds in such a way and had clearly not sought her consent or ensured that she took independent legal advice. In giving his evidence he had shown no contrition even though he had recognised that had Miss R failed to repay the overpayment there was potential for things to go wrong. Even on the day of the Tribunal hearing he still maintained he acted appropriately. He had said that he was "as likely as anyone else to repay" even though he knew that the firm was at the limit of its overdraft. Solicitors were trusted by their clients to provide the highest standards of stewardship of clients' funds. The First Respondent had clearly failed in that duty and it was a matter of great concern that he appeared to show no understanding of the seriousness of his misconduct.

54. Whatever his initial misunderstanding of the insurance position, and the onus had been on the partners to be aware of the Indemnity Rules, he had breached the Indemnity Rules and indeed the firm remained uninsured for a three month period.
55. Finally he had completely failed to respond to letters from his regulatory body and indeed appeared to treat the situation with some contempt. The Law Society could not exercise its regulatory functions, which were there for the protection of the public, if solicitors deliberately ignored correspondence.
56. The Tribunal had considered very carefully the appropriate penalty to impose on the First Respondent. The Tribunal had however concluded that the complete lack of awareness of the responsibilities of solicitors in respect of clients' funds which the First Respondent had demonstrated by his misuse of Miss K's funds and by his oral evidence to the Tribunal was such that it was not right that he be permitted to continue in practice. Clients had to have absolute confidence in their solicitors and the conduct of the First Respondent had damaged the reputation of the profession in the eyes of the public. The attitude shown by the First Respondent in his evidence made it clear that he saw no reason not to behave in the same way again as he did not accept that his behaviour had been wrong. In the interests of the protection of the public the Tribunal would order that he be suspended from practice as a solicitor for an indefinite period.
57. The Second Respondent had properly admitted the allegations. The Tribunal accepted that he had not been aware of the misuse of Miss K's money at the time nor of the insurance position. He should however have taken a much more active interest in those matters. It was not sufficient for a partner in a two partner firm of solicitors to say that he knew nothing of what was going on. There was an obligation to ask questions. He was aware of the accidental overpayment and of the firm's financial position and should therefore have enquired how the matter was being dealt with. He had received the letter of

12th December 2002 from the OSS and the letter of 27th February 2003. Again he had distanced himself from what was happening saying that he had left it to the First Respondent to deal with the correspondence. That correspondence set out serious matters of concern and there was a duty on the Second Respondent to establish the position and respond to the OSS. His failure to make himself aware of what was happening even after receipt of that correspondence demonstrated such a serious abrogation of responsibility towards the clients and the regulatory body that the Tribunal would mark its disapproval by a fixed period of suspension from practice of two years. The Tribunal would also order the Respondents to be jointly and severally liable for the Applicant's agreed costs."

27. The Tribunal on 4<sup>th</sup> October 2005 noted the concerns of the division of the Tribunal regarding the matters which had been before them in March 2004. The matters before the present Tribunal were further evidence of the disregard of the Respondents of their obligations in respect of clients' funds and the regulatory requirements in respect of accounting matters. Those regulatory requirements were there to protect clients' funds and to give the public confidence in solicitors' handling of those funds. The Tribunal noted that the Accountant's Report remained outstanding. There had been a delay in remedying breaches and in the case of Mr and Mrs H in particular that delay had been lengthy. They had failed to maintain accurate books of account and in particular had failed to carry out the required reconciliations over a period of some years. The Tribunal was satisfied that these matters were so serious that when seen in conjunction with the earlier matters substantiated against the Respondents in 2004 the appropriate penalty was to strike both Respondents off the Roll of Solicitors in the interest of the protection of the public and the reputation of the profession. The Tribunal considered that had the earlier division of the Tribunal in March 2004 been aware of the further matters they would have been likely to impose that higher penalty on both Respondents.
28. The Tribunal had concerns however that at least the Respondents' failings in relation to the reconciliations could have been brought to the attention of the earlier Tribunal. The Respondents' reporting accountants had issued qualified reports since 1998 and this must have been known at the time of the inspection in 2002 which had led to the allegations before the previous Tribunal. In fairness to the Respondents it was right that the Tribunal's concerns in that regard be reflected by a reduction in the costs which they would be ordered to pay in respect of the forensic inspection.
29. The Tribunal made the following orders:-

The Tribunal ordered that the Respondent, Ian Dudley Shaw of Woodville Drive, Southsea, PO1 2TG (formerly of London Road, Waterlooville, Hampshire), solicitor, be **STRUCK OFF** the Roll of Solicitors and it further ordered that he be jointly and severally liable with the Respondent Anthony John Nicholas Britnell to pay the legal costs of the application and enquiry fixed in the sum of £2,156.42 together with 50% of the costs of the Investigation Accountant of The Law Society amounting to £2,480.54.

The Tribunal ordered that the Respondent, Anthony John Nicholas Britnell of Copnor Road, Southsea (formerly of Seaview Avenue, Fareham, Hampshire), solicitor, be

STRUCK OFF the Roll of Solicitors and it further ordered that he be jointly and severally liable with the Respondent Ian Dudley Shaw to pay the legal costs of the application and enquiry fixed in the sum of £2,156.42 together with 50% of the costs of the Investigation Accountant of The Law Society amounting to £2,480.54.

Dated this 18<sup>th</sup> day of November 2005  
On behalf of the Tribunal

R B Bamford  
Chairman