

IN THE MATTER OF HARRY GOLDMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr I R Woolfe (in the chair)
Mr A G Ground
Mr D E Marlow

Date of Hearing: 30th 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 Jonathan Richard Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 18th January 2005 that Harry Goldman of Pontefract, West Yorkshire, 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 unbefitting a solicitor in each of the following particulars:-

- (i) That he failed to comply with Rule 15 of the Solicitors Practice Rule 1990 and/or paragraph 1 (d) of the Solicitors Costs Information and Client Care Code 1999, in that he failed to provide clients with the necessary costs information and / or his complaints procedure.
- (ii) That contrary to Rule 32 of the Solicitors Accounts Rules 1998 (SAR) he failed to keep accounting records properly written up.
- (iii) That he failed to carry out bank reconciliations contrary to Rule 32 (7) of the SAR.

- (iv) That he failed to remedy breaches to the Solicitors Accounts Rules promptly upon discovery in breach of Rule 7 of the SAR.
- (v) That he withdrew monies from client account other than as permitted by Rule 22 of the SAR, and / or in breach of Rule 19 (2) of the SAR.
- (vi) That contrary to Rule 19 (3) of the SAR he failed to transfer office money from client account to office account within 14 days.
- (vii) That contrary to Rule 22 (3) of the SAR he allowed interest charges in respect of his office account to be charged to client bank account.
- (viii) That contrary to Section 2 (a) of the Solicitors Publicity Code 2001 the Respondent's headed notepaper failed to include the words "Regulated by The Law Society".
- (ix) That contrary to Rule 13 of the Solicitors Practice Rules 1990 he failed to ensure that his office was properly or adequately supervised by a Solicitor qualified to supervise, in his absence.
- (x) That he failed and/or delayed in replying to correspondence received from The Law Society.
- (xi) That contrary to Rule 8 of the Solicitors Indemnity Insurance Rules 2003, he failed to apply for indemnity cover for the period 1st September 2003 – 30th September 2004, with the Assigned Risks Pool on or before 31st August 2003.

By a Supplementary Statement of the Applicant dated 20th May 2005 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor and/or in breach of relevant Rules in each of the following particulars namely:-

- (xii) That he failed to remedy breaches to the SAR promptly upon discovery in breach of Rule 7 of the SAR.
- (xiii) That he withdrew monies from client account other than as permitted by Rule 22 of the SAR.
- (xiv) That contrary to Rule 32 of the SAR he failed to keep accounting records properly written up.
- (xv) That contrary to Rule 4 and 5 of the Solicitors Indemnity Insurance Rules 2004 and/or Rule 1 (c) and (e) of the Solicitors Practice Rules 1990, he failed to take out and maintain qualifying insurance for the indemnity year 2004/2005, commencing on 1st October 2004 and as a consequence carried on his sole practice during the indemnity period 2004/2005 without having in place qualifying indemnity insurance.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 30th June 2005 when Jonathan Richard Goodwin Solicitor Advocate 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.

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

The Tribunal orders that the Respondent, Harry Goldman of Pontefract, West Yorkshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 30th day of June 2005 and it further Orders that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £8,436.34.

The facts are set out in paragraphs 1 to 31 hereunder:-

1. The Respondent, born in 1929, was admitted as a solicitor in 1955 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised on his own account under the style of WE Clayton Smith & Son from offices at Ropergate House, 43 Ropergate, Pontefract, West Yorkshire, WF8 1BL.

Assigned Risks Pool Monitoring Visit Report dated 24th May 2004

3. The monitoring visit took place on 5th and 6th May 2004, and a copy of the resulting Report dated 24th May 2004 was before the Tribunal. The Report identified many and varied breaches of the Solicitors Practice Rules 1990 and the Solicitors Accounts Rules 1998. In particular the investigating officer had cause to examine 6 client matter files details of which were set out in the report at pages 5-10.

Allegation (i)

4. It was ascertained that the Respondent did not have a written complaints procedure in breach of Rule 15 of the Solicitors Practice Rules.

Allegations (ii) – (vii)

5. The Report dated 24th May 2004 detailed the breaches of the Solicitors Accounts Rules at pages 10-11. It was ascertained that reconciliations of client account and designated deposit accounts were not being conducted at appropriate intervals. The Respondent said that his own accountants conducted the reconciliations which he would see and sign off. Examination of the accounting records showed that the most recent reconciliation of designated deposit accounts was for the period up to 30th April 2003, and prepared by the accountants on 3rd October 2003. The most recent reconciliation of client account was prepared by his accountants on 29th September 2003 and reviewed by the Respondent on 17th October 2003.
6. The most recent up to date accountant's report was for the period ending 30th April 2003 and was qualified. Details of matters arising from the accountant's report were at paragraph (vi) of the Report page 10 – 11.

Allegation (viii)

7. The Respondent's notepaper did not include the words 'Regulated by The Law Society' as required by Section 2(a) of the Solicitors Publicity Code 2001.

Allegation (ix)

8. The Investigating Officer was informed by the Respondent that an unadmitted Clerk supervised his practice during his absence along with his secretary. He also had an arrangement with another solicitor in the town who could be contacted for advice in the event of any difficulty arising during his absence. The arrangements put in place by the Respondent were insufficient to comply with the provisions of Rule 13 of the Solicitors Practice Rules 1990, in that a Solicitor 'Qualified to supervise' would not have been supervising and/or managing the Respondent's practice during any period of absence.

Allegation (x)

9. By letter dated 23rd June 2004 The Law Society wrote to the Respondent enclosing a copy of the Report seeking his explanation in relation to the matters contained therein. The Respondent failed to reply or provide explanation. The Respondent also failed to reply to a further letter from The Law Society dated 14th July 2004.
10. By letter dated 16th August 2004 The Law Society wrote to the Respondent indicating that the matter was to proceed by way of formal adjudication. The matter was considered by an Adjudicator on 20th September 2004, who, having considered the Report and the Respondent's failure to reply to enquiries, resolved to refer his conduct to the Tribunal.

Allegations (x) and (xi)

11. By letter dated 14th April 2004 Capita, for and on behalf of the Assigned Risks Pool ('ARP') wrote to The Law Society in connection with the Respondent's application to the ARP indicating that no further response had been received from him regarding his gross fees. The Respondent had completed a proposal form dated 23rd March 2004 for indemnity cover for the period 1st September 2003 to 30th September 2004.
12. By letter dated 5th February 2004 The Law Society wrote to the Respondent by faxed letter advising him that he should contact the ARP to arrange qualifying insurance for the period commencing 1st September 2003.
13. By letter dated 10th February 2004 The Law Society wrote to the Respondent indicating that as he did not have insurance in place from 1st September 2003, W E Clayton Smith & Son were in breach of the Solicitors Indemnity Insurance Rules.
14. By letter dated 28th May 2004 The Law Society wrote to the Respondent requesting his explanation as to why he failed to make application to join the ARP prior to 1st September 2003, and in compliance with the requirement of Rule 8 of the Solicitors Indemnity Insurance Rules 2003. The Respondent failed to reply to provide explanation. The Respondent failed to reply to a further letter from The Law Society dated 21st June 2004.

15. By letter dated 15th July 2004 The Law Society wrote to the Respondent confirming that the matter was to be considered by an Adjudicator. On 2nd September 2004 an Adjudicator resolved to refer the Respondent's conduct to the Tribunal.

Forensic Investigation Unit Inspection Report dated 18th February 2005

16. Upon due notice the Forensic Investigation Unit of The Law Society carried out an inspection of the Respondent's books commencing on 11th January 2005. A copy of the resulting Report ("FIU Report") dated 18th February 2005 was before the Tribunal.
17. The Senior Investigation Officer ascertained that the books of account were not in compliance with the Solicitors Accounts Rules for the reasons set out in paragraph 4 of the FIU Report.
18. Given the state of the books it was not considered practicable to establish the amount of cash available, but the Senior Investigation Officer was able to establish that a minimum shortage of £5,261.48 existed as at 30th November 2004. The Respondent received £2,000.00 from a client, Mrs H, during the course of the inspection which was credited to client bank account reducing the minimum shortage to £3,261.48.
19. The shortage was caused as a consequence of:-
- (a) Client funds not credited to client bank account - £5,126.00
 - (b) Debit balances - £135.48

Client funds not credited to client bank account - £5,126.00 (paragraphs 9-10 of the FIU Report)

20. The Respondent acted for Mrs H in the purchase of a property. Mrs H provided a personal cheque for £10,000.00 dated 18th November 2003. Notwithstanding that a paying in slip dated 19th November 2003 was prepared to enable the cheque to be paid into the client bank account, and that the same was posted to the credit of the relevant client matter ledger, the cheque was not paid into the client bank account. The error was not identified until October 2004 when the firm's accountants were carrying out the retrospective reconciliation for that month.
21. The firm's reporting accountants corrected the posting to the client matter ledger resulting in a debit balance of £10,126.00 as at January 2004. On 9th November 2004 £5,000.00 was received from Mrs H following notification to her of the oversight reducing the shortage to £5,126.00.

Debit Balances - £135.48 (paragraphs 11 – 13 of the FIU Report)

22. The Respondent's reporting accountants had identified posting and/or arithmetical errors in connection with 13 client matter ledgers which had previously been archived with an apparent nil balance. Following correction, there were debit balances ranging from £0.18 to £40.00, totalling £135.48.
23. Full particulars were set out in paragraphs 11 – 13 of the FIU Report. The Respondent accepted the Senior Investigation Officer's explanation that in the circumstances and

having regard to the state of the accounts, the Officer could not express an opinion as to whether the Respondent held sufficient client funds to meet his liabilities to those clients. The Respondent accepted the existence of the minimum shortage and pointed out that a further £2,000 had since been received from Mrs H (see paragraph 18 above).

Lack of insurance (paragraphs 14 – 17 of the FI Report)

24. On 5th May 2004 the firm was issued with a debit note for the premium of £19,042.44 in respect of the indemnity period 1st September 2003 – 30th September 2004 during which period the firm had had professional indemnity cover as a member of the ARP. The firm was also charged a fee of £2,115.08 relating to a monitoring visit. The Respondent confirmed that he had made no payment in respect of those charges albeit he had made an offer to pay by instalments.
25. The Senior Investigation Officer explained to the Respondent that he was not eligible for professional indemnity cover through the ARP for the period 1st October 2004 – 30th September 2005, because of his failure to pay the premium for the previous period. The Respondent was asked what arrangements he had made for professional indemnity cover for the current period, to which he replied that he had not addressed the issues until December 2004 when correspondence from the ARP pointed out his position. The Respondent then said he approached his broker to arrange cover, but he had not had any proposals from the broker. The Respondent accepted that he did not currently have professional indemnity cover.
26. The Respondent was only able to explain his action by suggesting that he had kept his head down, that he had no one to talk to and no time for himself, as his clients came first. He confirmed that since 1996 he had been living on his own pension and taking no drawings from the firm.
27. By letter dated 23rd February 2005 The Law Society wrote to the Respondent enclosing a copy of the FIU Report seeking his explanation.
28. Following telephone conversations with The Law Society on 9th and 10th March 2005 the Respondent did reply by letter dated 9th March 2005 enclosing a copy of the letter sent to the Clerk to the Tribunal dated 4th March 2005 which set out some of his current difficulties. By letter dated 11th March 2005 the Respondent wrote to The Law Society confirming that he had paid into his client account sums to cover the balance shown overdrawn in Mrs H's case and also confirmed that he had made arrangements for the reconciliations to be carried out.
29. On 15th March 2005 The Law Society contacted the Respondent and requested evidence from his bank that the cash shortfall had been replaced. By letter dated 16th March 2005 the Respondent provided a photocopy of a Barclays Bank stamped copy paying in slip showing the payment of £1,100.00.
30. The Law Society telephoned the Respondent on 17th March 2005 to enquire whether he would be sending any further documentation in relation to the steps he was taking to try to obtain qualifying indemnity insurance. The Respondent advised that he had written to his insurance brokers regarding the steps that needed to be taken in order to obtain qualifying insurance.

31. By letter dated 23rd March 2005 The Law Society wrote to the Respondent enclosing a copy of a Law Society Report that was to be considered in due course. The Respondent replied by letter dated 4th April 2005 setting out his further representations. On 6th April 2005 the Adjudication Panel resolved to intervene into the Respondent's firm pursuant to paragraph 1 (1) (c) of Part 1 of Schedule 1 to the Solicitors Act 1974 (as amended) on the grounds that the Respondent had failed to comply with the Solicitors Accounts Rules 1998, the Solicitors Practice Rules 1990 and the Solicitors Indemnity Insurance Rules 2004 and further resolved to refer his conduct to the Tribunal.

The Submissions of the Applicant

32. The Tribunal was referred to the letter from Messrs Zermansky & Partners, the Respondent's solicitors, dated 10th June 2005. The Applicant submitted that the letter effectively contained admissions.
33. This was a sad but serious case and it was unfortunate that a solicitor who had held a Practising Certificate for 50 years faced these allegations at the end of his career. The 15 allegations related to serious failings regarding the Solicitors Accounts Rules and the regulatory requirements. There had been a fundamental failure by the Respondent to deal with these matters.
34. There was no allegation of dishonesty made against the Respondent who was aged 76 and not in the best of health.
35. The Applicant sought his costs in the sum of £8,436.34 to include the fees of the Investigation Officer. The Applicant asked the Tribunal to consider the statement of means submitted by the Respondent and the letter dated 29th June 2005 from Messrs Zermansky relating to the Respondent's inability to pay costs. Despite the representations in that letter the Applicant submitted that there was no compelling reason for the Tribunal not to make a fixed costs order. Enforcement was a different issue and the Applicant would send a copy of the Respondent's statement of means to The Law Society.

The Submissions of the Respondent

36. The submissions on behalf of the Respondent were contained in Messrs Zermansky & Partners' letters of 10th June 2005.
37. The Respondent would not be attending the Tribunal due to age and to his shame and concern about appearing and he apologised for that.
38. The Respondent also apologised to the Tribunal for ever having to appear before the Tribunal, to The Law Society and to the public. He thanked The Law Society Regulation Unit for their offers of help and guidance which he regretted he had not followed.

39. The Tribunal was given details of the Respondent's health difficulties and Zermansky & Partners' further letter of 29th June 2005 enclosed a report from the Respondent's doctor.
40. The letter of 10th June 2005 set out the struggle the Respondent had latterly as a sole practitioner given the increasingly necessary bureaucracy and new practice requirements for solicitors.
41. The Tribunal was asked to note that no member of the public had suffered financially in any matter whatsoever. All monies due had been covered either by monies in client account or had been paid from the Respondent's own resources.
42. Reference was made to various errors which had occurred. The Respondent had acknowledged that he had not kept his books up to date in accordance with the requisite Rules.
43. It was submitted that the worry of individual problems could make it difficult for a person, especially one of the Respondent's age, to be able to deal with everything on a day to day basis. The Respondent recognised that his approach had not been sufficient for present day requirements and apologised for not observing the Rules.
44. It was accepted that the most serious aspect of the Respondent's inability to cope had been that relating to lack of insurance. The Respondent had found it difficult to obtain indemnity cover at a reasonable cost. When cover was available from the ARP it was at such a high cost that this had had a very seriously adverse effect upon an already fragile situation.
45. The Respondent had accepted that he no longer could or would practise as a solicitor. Messrs Zermansky & Partners said that the Respondent did not oppose "the application for him to be struck from the Roll" and had authorised them to apply to The Law Society for his name to be removed from the Roll. This showed the Respondent's genuine lack of intention ever to practise again.
46. Details of the Respondent's current liabilities were set out in the letter.
47. The Tribunal was urged not to increase the penalties which the Respondent had suffered as a result of the intervention and other matters mentioned.

The Findings of the Tribunal

48. The Tribunal found the allegations to have been substantiated on the documentation before them, indeed the allegations were not contested.
49. The Tribunal noted the written submissions made on behalf of the Respondent to the Tribunal and also noted carefully the Respondent's own responses to The Law Society during the investigation period.
50. The Tribunal considered that this was a very sad case. The Respondent had had a 50 year career in the law and had never appeared before the Tribunal previously. There

was no allegation of dishonesty against the Respondent but he had clearly been unable to cope with running the practice. He had failed to keep up with regulatory changes and had failed to observe the rules and regulations applicable to all solicitors. The 15 allegations included serious breaches of the Solicitors Accounts Rules, and the Respondent had practised without indemnity insurance. The Respondent had failed to answer correspondence and it appeared that he had “put his head in the sand”. The Law Society had been forced to intervene. The Tribunal noted the mitigation put forward on behalf of the Respondent and his current ill health. The letter from Messrs Zermansky & Partners dated 10th June 2005 had said that the Respondent “does not oppose the application for him to be struck from the Roll”. Penalty was a matter for the Tribunal and the Tribunal felt that the Respondent had perhaps not understood the nature of the penalties which the Tribunal was likely to impose in the circumstances. The Tribunal had sympathy with the Respondent’s difficulties but given the seriousness of the allegations did not think it appropriate to allow the Respondent to continue in practice, and indeed noted that he did not intend to do so. The Tribunal considered that in all the circumstances including the Respondent’s ill health the appropriate penalty was an indefinite suspension.

51. In relation to costs the Tribunal accepted the submission of the Applicant that it was right that an order be made that the Respondent pay the Applicant’s costs and the Tribunal would so order. Enforcement was a matter for The Law Society and the Tribunal had noted that the Applicant intended to bring to the attention of The Law Society the Respondent’s difficult financial circumstances.

52. The Tribunal made the following order:-

The Tribunal ordered that the Respondent, Harry Goldman of Pontefract, West Yorkshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 30th day of June 2005 and it further Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £8,436.34.

Dated this 5th day of September 2005
On behalf of the Tribunal

I R Woolfe
Chairman