

IN THE MATTER OF SALLY LIZABETH GIBBS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr A H B Holmes
Lady Maxwell-Hyslop

Date of Hearing: 18th October 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 Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London W1U 2PQ on 6th May 2005 that Mrs Sally Elizabeth Gibbs of Clifton Village, Nottinghamshire, solicitor, might be required to answer the allegations contained in the statement which accompanied this application and that such order might be made as the Tribunal thought right.

On 24th August 2005 the Applicant made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:

- a) That she failed to pay clients' money into her designated client account in breach of Rule 17 of the Solicitors Accounts Rules 1998.

- b) That she improperly withdrew client money from her designated client account and in breach of Rule 22(1) of the Solicitors Accounts Rules 1998.
- c) That she improperly withdrew client money from her designated client account in excess of funds held and in breach of Rule 22(5) of the Solicitors Accounts Rules 1998.
- d) That she failed upon discovery to remedy a shortage of money in client account in breach of Rule 7(1) of the Solicitors Accounts Rules 1998.
- e) That she failed to maintain her designated client account in accordance with Rule 32 of the Solicitors Accounts Rules 1998.
- f) That in transferring without authority monies from her designated client account to her personal account, and in transferring without authority monies from her practice office account, and in making payments without authority from her designated client account in respect of her practice expenses she was acting dishonestly and in breach of Practice Rule 1 of the Solicitors Practice Rules 1990.
- g) That she failed to discharge her professional undertaking given to solicitors in connection with a conveyancing matter.
- h) That she failed to deliver to The Law Society by 30th March 2005 or at all her Accountant's Report for her financial year ending 30th September 2004 in breach of Section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitor Accounts Rules 1998.
- i) That she failed to reply promptly and substantively or at all to correspondence from The Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 27th September 2005 when Robert Simon Roscoe appeared as the Applicant. The Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent save that she denied any allegation of dishonesty. The Respondent had filed a statement of truth dated 11th October 2005.

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

The Tribunal ORDERS that the Respondent, SALLY LIZABETH GIBBS of Clifton Village, Notts, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,440.31 inclusive.

The facts are set out in paragraphs 1 to 26 hereunder:

1. The Respondent, born in 1952, was admitted as a solicitor in 1978. She practised as a sole practitioner under the style of SJB Thomas & Co at 118 Derby Road, Stapleford,

Nottingham NG9 7BH. On 1st February 2005 The Law Society intervened into the Respondent's practice.

2. On 12th October 2004, an Investigation Officer of The Law Society (the IO) attended the Respondent's practice for the purpose of inspecting her books of account and other documents.
3. The IO's report dated 25th January 2005 was before the Tribunal.
4. At the commencement of the inspection on 12th October 2004 the books of account were not in compliance with the Solicitors Accounts Rules as there were no proper client bank account reconciliations and client reconciliations for the practice.
5. On 13th December 2004, with the assistance of a firm of chartered accountants, client bank account and client reconciliations had been prepared for 30th November 2004. The books of account were still not in compliance with the Solicitors Accounts Rules.
6. A list of liabilities to clients as at 30th November 2004 was produced for inspection which totalled £974,636.71 after adjustment. The items on the list were in agreement with the balances shown in the clients' ledger and a comparison of the total liabilities with cash held on client bank accounts at that date, after allowance for uncleared items, showed the following position-

Liabilities To Clients Per the Books	£974,636.71
Cash available	<u>714,549.23</u>
Cash shortage	<u>260,087.48</u>

7. The Respondent agreed the amount of the cash shortage during a meeting with the IO on 14th January 2005. She said she had not been aware of the extent of the cash shortage until recently when she had instructed a firm of chartered accountants to prepare the November 2004 client reconciliation. The Respondent had been aware that a client account shortage had existed since the Reporting Accountant's Report in March 2004 but she "hadn't got round to sorting it out".
8. Three debit balances were eliminated during the inspection. The remainder of the cash shortage, £256,981.71 had not been rectified.
9. At their meeting on 14th January, the Respondent told the IO she was not then able to rectify the remaining cash shortage. She said she that she was in the process of remortgaging her house to raise £215,000.00 and, "will have to find the rest." She said her "intention is to pay the money back, close the practice and then go and do something else. Sell the house and start again".
10. The Respondent said, "I know I should safeguard client money, I know what I have done was wrong and I suppose carelessness is not an excuse or an explanation".
11. The cash shortage arose in the following ways:
 - (i) **Unallocated Payments and Transfers from Client Bank Account:**
 - (a) Transfers to Mrs Gibb's Personal Bank Account 24,000.00

	(b) Payments for Office Expenses	34,180.12	
	(c) Transfers to Office Bank Account	95,958.06	
	(d) Unknown Payments	<u>12,059.15</u>	166,197.33
(ii)	Client Monies Paid into Office Bank Account		31,239.37
(iii)	Debit Balances:		
	Overpayments	62,135.33	
	Overtransfer	<u>272.01</u>	62,407.34
(iv)	Book Difference (Shortage)		<u>243.44</u>
			<u>260,087.48</u>

12. The IO ascertained that the following three improper and unallocated transfers were made from client bank account to the personal bank account of Mrs Gibbs:
- | | |
|------------------------------|------------------|
| | £ |
| 3rd November 2003 | 11,000.00 |
| 4 th June 2004 | 6,000.00 |
| 13 th August 2004 | <u>7,000.00</u> |
| | <u>24,000.00</u> |
13. The IO noted that at each of the above dates the office bank account overdraft was at a level that was either in excess of its limit or would have been taken above its limit if the transfers had been made from the office bank account.
14. In a period from November 2002 to September 2004 the evidence before the Tribunal showed that seventeen improper and unallocated payments for office expenses totalling about £34,000 were made from the client bank account.
15. The direct debit for the Respondent's professional indemnity insurance had been paid from client bank account for the whole of the year ending 30th September 2004.
16. The IO noted that certain payments were made by bank transfer from the client bank account at a time when funds were not available in the office bank account.
17. During the period October 2002 to November 2004 the evidence showed that twenty improper and unallocated transfers totalling almost £96,000 were made from the client bank account to office bank account.
18. The Respondent agreed with the IO that these transfers from client to office bank account were a misuse of client funds.
19. The IO noted that at the time of these transfers the office bank account was approaching its overdraft limit of £10,000.00. The effect of many of the transfers was to allow payments to be made from the office bank account whilst remaining below the overdraft limit.
20. At the inspection date, 30th November 2004, the IO ascertained that thirteen client matters were in debit balance, varying in amount between £30.00 and £20,000.00 and totalling £62,135.33, due to overpayments.

21. The largest overpayment had been made in a conveyancing matter conducted for Mr R. The sale proceeds were £75,000, but were erroneously shown in the completion statement to be £95,000 resulting in an overpayment to the client of £20,000. Repayment from the client had been sought, but not made.
22. In April 2004 the Respondent was acting for the vendor, Mr P, in the sale of a property being purchased by Mr S. Key Conveyancing, a trading style of Hardman & Co, solicitors in Northampton acted for Mr S.
23. Completion took place on 16th April 2004. The property had a registered leasehold title. The vendor's interest had not previously been registered and prior to completion the purchaser's solicitors sought and obtained an undertaking dated 1st April 2004 from the Respondent in the following terms,

“We set out below the terms of the proposed undertaking we are prepared to give in relation to our client's transfer and registering title at HM Land Registry. Please let us know if these terms are acceptable to you.

With regard to our client's title in respect of [the property] we undertake to stamp the transfer and then to register our client's title at HM Land Registry; to deal with any requisitions raised by HM Land Registry and to serve notice on the freeholder.”

24. The purchaser's solicitors arranged with the Respondent that she would lodge their Land Registry application with the application that she was to submit to HM Land Registry in pursuance of her undertaking.
25. Prior to August 2004 the purchaser's solicitors learnt that the Respondent had failed to submit her application to HM Land Registry. They wrote and telephoned the Respondent on a number of occasions, but received neither response nor acknowledgement from the Respondent.
26. Hardman & Co, complained to The Law Society on 17th December 2004. An intervention into the Respondent's practice had taken place on 1st February 2005, The Law Society therefore wrote to the Respondent about the matter to her home address on 23rd May 2005. She did not reply.

The Submissions of the Applicant

27. The Respondent had admitted all of the facts. It had been the Respondent's position that she had not been dishonest and that she had not deliberately misappropriated client money. She accepted that there had been a series of errors which she claimed to have been unconnected and had not been part of a deliberate attempt to shore up her firm's finances. She suggested that her professional indemnity premium had been paid from client account as a result of her bank's good nature or misguided attempt to help her.

28. The attention of the Tribunal was drawn to the fact that the IO reported that improper and unallocated transfers were made from client account to office account whenever the office account had reached or was approaching its overdraft limit. It was the Respondent's contention that the overdraft limit was not a factor as she would have been able to extend it without difficulty. There was however no supporting evidence placed before the Tribunal either that the bank would have been prepared to increase her overdraft limit or indeed that it had paid indemnity insurance premiums from client account in an endeavour to assist the Respondent.
29. The Respondent said that overpayments had been made by mistake but the fact that the Respondent was not able to raise money to put right the overpayments was a factor to be taken into consideration.
30. The Respondent accepted that she had been in breach of the Solicitors Accounts Rules. The Respondent took no issue with the allegation that she had been in breach of an undertaking given by her.
31. The Tribunal was invited to conclude that there were too many breaches on the part of the Respondent for there to be any doubt that the Respondent was aware of them. There were too many matters to amount to a coincidence or mistake. Even in a badly run practice it would have been apparent to the Respondent that she had not acted as an honest solicitor would.
32. The Applicant sought the costs of and incidental to the application and enquiry in the total sum of £12,440.31. This sum had been notified to the Respondent's solicitors in a letter sent by first class post on 14th October 2005. The Applicant had received no notification of any issue with this figure. The Respondent had been adjudicated bankrupt and The Law Society was unlikely to recover such costs. The Tribunal was invited to quantify the figure for costs in order to assist The Law Society's administration.

The Submissions of the Respondent (contained in a Statement of Truth dated 11th October 2005)

33. The Respondent intended no discourtesy to the Tribunal, she was unable to attend the hearing for a number of personal reasons not the least of which were her current financial circumstances.
34. The Respondent admitted all of the allegations save for allegation (f).
35. The Respondent had been subjected to pressures in connection with the management and running of her practice and the conduct of clients' affairs and she found she had been unable to cope but at the same time was unable to afford outside help.
36. The Respondent had at no time deliberately misappropriated cash nor had she deliberately acted in a way which was dishonest. She accepted that she had allowed errors to remain unremedied. She convinced herself that matters would be corrected over time. She had not prior to the IO's inspection appreciated that the shortfall on client account was anywhere approaching the figure that he identified. She remained

of the opinion that one or two clerical errors or failures to post transactions would account for a significant part of the shortfall.

37. The Respondent acquired the practice in October 1997. The former principal agreed to remain a consultant working part time for a period of five years. In 1998 he became ill and was unable to work for about six months. When he returned he sought to vary the financial arrangements entered into. He required extra payments for work he undertook for those he regarded as his "special clients". The Respondent did not agree and that created difficulty in their relationship. In addition there were problems on files which the Respondent had taken over. The differences between the Respondent and the consultant led to county court proceedings which were resolved by settlement in mid 2003. The former consultant continued to be involved with some ongoing files for example where he was an executor.
38. When the Respondent acquired the practice she acquired a new computerised system towards the end of 1997 and sought to transfer all matters to that system. There were old matters that had outstanding balances. At the time there appeared to be clear reconciliations and she was not aware of the client account deficiencies.
39. A number of the issues raised in the IO's report had arisen since the Respondent had taken over the firm but some had their foundation in incorrect entries made on the old files for the former principal.
40. The firm's fee earners filled out debit or credit slips and sent them to the cash office. The cashier would make payments into the bank account and post the entries on to the computerised system. If cheques were needed, slips were completed. The cheque was drawn by the cashier and signed by the Respondent or by her conveyancing clerk in her absence. Telegraphic transfer authorisations were signed by the Respondent or by the clerk. The Respondent believed she was in control of the banking and the payment of cheques into the bank and out third parties. Office and client account cheques were the same colour and it appeared that errors had been made in the use of the right chequebook.
41. There had been a series of unconnected errors but no deliberate act on the Respondent's behalf with any intention of shoring up the finances of the firm by using client account funds.
42. The Respondent did have a £10,000 overdraft limit on office account but she had on a number of occasions arranged for the limit to be extended. She believed that if she had been aware that the overdraft figure was to be exceeded the Respondent had no reason to believe that the bank would not have agreed again to extend the office account overdraft.
43. The Respondent believed that the bank made decisions on her behalf either in a misguided attempt to help her or as a consequence of error. The Respondent had not authorised the payment of any office expenses from client account. She believed that the direct debit set up and signed by her instructed that the deductions were to be made from office account.

44. The Respondent accepted that it was her responsibility to manage the finances of the firm, she had been under pressure and recognised that she had failed to give the matter the attention it required.
45. The Respondent went on to deal with the individual allegations as follows:
- (a) In the matter of Mrs C the lady who paid the cheques into the bank made a mistake and made payment into the wrong account. The bank would not transfer the funds until the cheque had cleared. The Respondent intended to deal with the matter when the cheque had cleared but became embroiled in other matters and overlooked the required transfer.
 - (b)
 - (i) Direct debits had been set up properly to be paid out of office account and the bank decided to make transfers from client account. The Respondent spotted this error on one of the bank statements and intended to put it straight but, with the other pressures she was under at the time, she did not do so. This was not a deliberate decision to use clients' money but rather a failure to get round to taking remedial action.
 - (ii) With regard to the transfers from client to office account, it had been suggested that these payments were made from client account because there were insufficient funds in office account. Whilst they would have exceeded the authorised overdraft limit, the funds would have been met had they been paid out of office account. The Respondent would have been able to extend the overdraft as she had done on a number of occasions.
 - (iii) With regard to the unknown payments, those appeared to be errors of posting and were in respect of client transactions
 - (c) The Respondent accepted that she overpaid some clients by mistake. Some funds had been recovered. She accepted responsibility for those errors. There was no personal benefit to the Respondent.
 - (d) The Respondent accepted that she failed to remedy a shortage of money in client account. This was brought about by the pressures on her in practice and her private life. She took steps to remortgage her house to repay the shortfall.
 - (e) The Respondent accepted that she failed to maintain her client account in accordance with Rule 32.
 - (f) The Respondent accepted that she impaired her integrity in allowing these breaches to occur. They occurred and/ or were not remedied as a result of being unable to cope rather than as a result of any act of dishonesty. At no time did the Respondent consciously appropriate money and at no time did she form an intention to keep money that had been obtained by error. It was always her intention to correct the position but, from the time she first realised that there was a problem, matters deteriorated very quickly at the same time as the pressures upon her seemed to increase dramatically. She accepted that she

had fallen short of the standard required and expected of her but she had not done so deliberately.

- (g) The Respondent accepted that she failed to discharge her professional undertaking in connection with the conveyancing matter. She complied with her undertaking to discharge the service charge but, between giving the undertaking and making payment of the stamp duty, the form changed and required the client's own signature. Without this form, the transaction could not be completed and she could not comply with the undertaking, which by reason of the change of form, had been to undertake a task which was outside her control. She made numerous efforts to obtain a signature to the form and, in the early stages, spoke by telephone with the solicitors to whom she had given the undertaking to explain the position. She continued to make attempts to obtain the signature but, at the same time, was struggling to deal with other issues within the firm. She accepted that subsequently she ignored approaches from the solicitors on the other side because she was unable to advance the matter.
 - (h) The Respondent accepted that she failed to deliver an Accountant's Report by 30th March 2005. The Law Society had intervened into her practice on 27th January and she was without funds to pay for accountants. The Law Society had taken away all records so that an Accountant's Report could not have been prepared.
 - (i) The Respondent did not respond to correspondence from The Law Society because of her inability to comply with the requests. She could not send copy documents to The Law Society because they held all her papers. The Respondent felt there was an air of inevitability about everything and that one thing after another was piling up on her.
46. When the Respondent took over the practice she failed to undertake sufficient due diligence as to the financial status and record keeping of the firm and, since then, had been trying to build on a platform which was not solid.
 47. The Respondent was a divorced woman and had no support at home. In addition to the pressures within the practice and the litigation with the former principal, the Respondent's mother became ill and she was required to accept responsibility for her care and ultimate placement in a nursing home and to deal with the effects on her elderly father. This was time consuming and emotionally draining and distressing.
 48. The Respondent became aware in March 2004, when her accountants provided a qualified Accountant's Report indicating that there was a shortfall, that there was a problem. However, she did not understand the nature and/ or the extent of that problem. She believed it could be put right. The problem identified by the IO was far greater than she had previously believed.
 49. Since the IO's shortfall figure had been made known to the Respondent she had become increasingly depressed and resigned to the fact that she would probably lose everything. Her observations had been made with the benefit of hindsight and she had made admissions at the earliest opportunity.

50. In October 2005 the Respondent declared herself bankrupt.
51. The Respondent invited the Tribunal to accept that her conduct was not deliberate nor dishonest but arose rather as a consequence of being unable to cope.

The Findings of the Tribunal

52. The Tribunal found the allegations to have been substantiated. All of them were admitted by the Respondent save for allegation f. When considering whether or not the Respondent had been guilty of dishonesty the Tribunal applied the test in Twinsectra v Yardley and Others (2002) UKHL 12. The Tribunal concluded that the payments and transfers made from client account for the direct benefit of the Respondent or her firm were so numerous and frequent and had on many occasions been made to office account at times when the overdraft limit was being approached or had been reached that at best the Respondent had chosen to turn a blind eye to what was going on. This amounted to a failure on her part to exercise a proper stewardship over clients' funds entrusted to her. The Tribunal considered that any solicitor knowing of the Respondent's position and how she conducted her stewardship of client moneys would consider that she had behaved dishonestly. The Tribunal considered it inconceivable that the Respondent should not herself be aware that her fellow solicitors would hold such opinion. The Tribunal did therefore find that the Respondent had behaved dishonestly.

The Tribunal's Decision and its reasons

53. Not only had the Respondent been guilty of serious breaches but the Tribunal has made a finding that she has been dishonest in her handling of client funds. It is fundamental to ensure, both for the protection of the public and in order to protect the good reputation of the solicitors' profession, that a solicitor acts in all respects with the highest standards of probity, integrity and trustworthiness particularly with regard to his handling of clients' moneys. The Respondent has fallen very far short of those high standards. The Tribunal ordered that the Respondent be struck off the Roll.
54. The Tribunal has taken into account the fact that the Respondent has been adjudged bankrupt. It is right that she be ordered to pay the costs of and incidental to the application and enquiry. The Tribunal notes that the figure sought by the Applicant has been notified to the Respondent's solicitors and no objection or comment has been received. In these particular circumstances in order to save the time, trouble and expense of obtaining a detailed assessment, the Tribunal considered that as the figure sought by the Applicant was entirely reasonable it should order the Respondent to pay such costs in the fixed sum of £12,440.31 inclusive.

Dated this 11th day of November 2005

On behalf of the Tribunal

A H Isaacs
Chairman