

IN THE MATTER OF MICHAEL ALISTAIR WATTS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr W M Hartley (in the chair)

Mr A H Isaacs

Mr M G Taylor CBE

Date of Hearing: 2nd November 2006

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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 Iain George Miller, solicitor and partner in the firm of Wright Son & Pepper, 9 Gray's Inn Square, London, WC1R 5JF on 10<sup>th</sup> April 2006 that Michael Alistair Watts of Emberton, Olney, Buckinghamshire, solicitor, 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:-

- 1) withdrew money from client account in respect of costs without delivery of a bill or written intimation of costs contrary to Rule 19(2) of the Solicitors' Accounts Rules 1998 ("the SARs");
- 2) withdrew money from client account in excess of money held on behalf of individual clients contrary to Rule 1 and 22 of the SARs;
- 3) was guilty of conduct unbecoming a solicitor in that he transferred money from client to office account which was in excess of the money he was entitled to under the terms of his retainer;

- 4) was guilty of conduct unbecoming a solicitor in that he paid a legacy to himself in respect of an estate in advance of other legatees and when there were no funds available to make such a payment;
- 5) made transfers from client to office account which were not allocated to specific clients contrary to Rule 1 of the SARs.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 2<sup>nd</sup> November 2006 when Mr Miller appeared as the Applicant. The Respondent did not appear and was not represented.

The evidence before the Tribunal included the Forensic Investigator's Report dated 20<sup>th</sup> May 2005 and subsequent correspondence between the Law Society, the Respondent and his then solicitors, Radcliffes LeBrasseur, in which the Respondent made admissions of facts which supported the allegations.

**At the conclusion of the Hearing the Tribunal made the following Order:-**

The Tribunal Orders that the Respondent Michael Alistair Watts of Emberton, Olney, Buckinghamshire, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,500.

**The facts are set out in paragraphs 1 to 15 hereunder:-**

1. The Respondent, born in 1947, was admitted as a solicitor in 1977. He was at all material times a sole practitioner practising under the name of M.A Watts Solicitors of 9 High Street, Olney, Buckinghamshire, MK46 4EB.
2. The allegations arose as the result of an investigation into the Respondent's practice in March 2005, the findings from which were contained in the Forensic Investigation Report dated 20<sup>th</sup> May 2005. The Respondent by letter dated 3<sup>rd</sup> June 2005 to The Law Society made material admissions in respect of these findings and on 21<sup>st</sup> July 2005 The Law Society resolved to intervene in the Respondent's practice.

Allegations 1 and 3

Ms EP's estate

3. The Respondent had acted for the executors in the estate of a Ms EP. He raised bills and transferred costs without delivering the bills to the executors. The bills were as follows:
  - a) between April 1998 and November 2001, 27 bills totalling £195,687.43;
  - b) between April 2002 and January 2005, a further 19 bills totalling £84,428.28.

The Respondent admitted to the Forensic Investigator that since November 2001 he had not sent any bills or given any written intimation of costs to any of the executors.

4. The Respondent had charged the executors £280,115.71. A calculation of the costs allowable on the basis of the Respondent's client care letter to the executors dated 6<sup>th</sup>

October 1997 amounted to £160,465.12. There was thus an overcharge of £119,605.59 and the Respondent had improperly transferred such sum from client to his office account.

Mr B

5. Similarly, in a personal injury matter relating to a Mr B, the Respondent had between 5<sup>th</sup> December 2003 and 24<sup>th</sup> March 2004 raised bills of costs totalling £65,250 which he had not delivered to Mr B. The bills raised had moreover been for round sum amounts and lacked details of not only Mr B's address but also of the work carried out. The bills were as follows:

05/12/03	£30,000.00
16/01/04	11,750.00
17/02/04	11,750.00
24/03/04	11,750.00

These amounts had been transferred from client to office account between 5<sup>th</sup> December 2003 and 31<sup>st</sup> May 2004. When asked by the Forensic Investigator if the bills had been delivered to the client, the Respondent had replied "I have no idea if they were delivered or not".

Allegations 2 and 4

6. Debit balances ranging in value from £0.10 to £6,457 and totalling £21,005.41 arose on 42 individual client matters. The Respondent had admitted the existence of the debit balances and the consequent cash shortage to the Forensic Investigator. In respect of more than half of these, the Respondent could offer no explanation. In respect of a further ten, the Respondent admitted overcharging or taking his costs twice.

Mr W's estate

7. One of the matters in respect of which the Respondent took his fees twice related to the administration of the estate of a Mr W. The Respondent had on 30<sup>th</sup> September 2004 sent a bill of costs to his clients, the personal representatives, in the sum of £3,198.94. The bill was settled by direct payment into the Respondent's office bank account on 27<sup>th</sup> October 2004. However, on 1st October 2004 the Respondent had made an improper client to office transfer of £2,173.75, purportedly in respect of his firm's costs, and this had resulted in the debit balance of £2,170.61. The Respondent when asked about this matter had commented, "...there is no bill on file for that amount, I had no authority, it was not appropriate, I accept it is a breach, I accept that there is a shortage and I accept it was an improper transfer on the face of it".

Ms G's estate

8. Another such debit balance had arisen in the administration of the estate of a Ms G. The Respondent had been both executor and sole residuary beneficiary of the estate. Probate had been granted in August 2004 and the gross value of the estate was stated to be £240,000. The will provided for legacies in the sums of £10,000, £3,000 and £3,000 to Mr TD, Mr and Mrs JU and Ms SM respectively.

9. On 6<sup>th</sup> September 2004, the Respondent closed Ms G's Nationwide Building Society account which had a balance of £1,320.39. There was no evidence on the client matter file to suggest that the money had been paid into the Respondent's client bank account or the office accounts. The Respondent when asked about the closure of the account said "It was probably me who closed the account and the money probably went straight to me, I took the view I was entitled to it, estate was adequate enough to pay other people off, it was an advance payment".
10. The Respondent charged the account for Ms G's estate in the clients' ledger with amounts totalling £2,622.32 albeit there were no monies properly available. This had resulted in a debit balance of £2,622.32. The Respondent when asked why he had made client to office transfers when there were clearly insufficient funds, told the Forensic Investigator: "I agree that it's an improper transfer, I didn't check the position of the ledger on this occasion".
11. On 14<sup>th</sup> October 2004 client account for Ms G's estate was credited with sums totalling £3,447.30 which rectified the cash shortage and left a credit balance of £842.98. However, on the following day, the account once again became overdrawn by reason of the Respondent's payment to himself of his legacy in the sum of £3,274.69 and of his costs in the sum of £848.78. The Respondent had thus paid an inheritance to himself at a time when there were insufficient funds available on client account and in any event the payment was made in advance of payments to other legatees. These payments resulted in a debit balance of £3,298.58.
12. The Respondent was asked by the Forensic Investigator why he had paid himself part of his entitlement before any of the other legacies had been paid out and the Respondent replied "It may have been unprofessional to have paid myself with hindsight but at the time of making payment I did not think that. I didn't apply my mind at the time".

#### Allegation 5

13. On 2<sup>nd</sup> November and 29<sup>th</sup> November 2004, the Respondent's client bank account was charged with £4,053.09 and £1,475 respectively in respect of cheques issued on it and subsequently deposited in the overdrawn office bank account. These sums were not allocated to any individual ledger account in the clients' ledger.
14. The Respondent told the Forensic Investigator that the payments related to "old balances" but which he did not identify. The Respondent added that he had stopped making such payments when he realised that he "shouldn't be doing it".
15. The Respondent, after the inspection had begun in January 2005, made two further client to office bank account transfers which were not allocated to individual accounts in the clients' ledger. These totalled £6,774.75 and again the Respondent could not say to what they related. He told the Forensic Investigator that he had not raised bills in respect of either transfer and added "It's got to be an improper transfer".

#### **The Applicant's Submissions**

16. The Applicant said that the allegations were put on the basis that the Respondent had acted with conscious impropriety. He submitted however that conscious impropriety, or dishonesty, was not an essential element of the allegations. It sufficed that the Respondent had made personal gain by his actions, particularly by his making improper transfers at the time of cashflow crises in his office account.
17. The Applicant submitted that the Respondent must have been aware that what he did was improper. His actions had taken place over a number of years and there was a very significant cash shortage, a sizeable part of which the Respondent did not dispute. Accordingly the Applicant submitted that the Respondent was guilty of conscious impropriety.
18. The Applicant further stated that the Respondent, having made some small repayments towards the cash shortfall, was now bankrupt and claims had been made on the Compensation Fund.

### **The Respondent's Submissions**

19. The Tribunal had regard to the content of the Respondent's letter dated 26<sup>th</sup> October 2006. It was noted that the Respondent did not accept that he had acted dishonestly.
20. The Respondent asserted that there were inaccuracies in the documents presented on behalf of The Law Society but he did not particularise these.
21. The Respondent contended that, as executor and residuary beneficiary of Ms G's estate, the way in which he had administered Ms G's estate had not been improper.

### **The Tribunal's Findings**

22. The Tribunal accepted the content of the Forensic Investigator's Report which the Respondent very largely had not contested. The Respondent had moreover elected not to attend today's hearing to give oral evidence, on which he could be examined, in answer to the assertion of dishonesty. The Tribunal found the facts as set out above.
23. The Tribunal on the facts as found concluded that all the allegations against the Respondent had been proved. There were too many instances of improper transfers for it to be likely that these had arisen by inadvertence.
24. The Tribunal had no hesitation in finding that the Respondent had acted dishonestly. It was plain that the Respondent had raided client account whenever under financial pressure. The Tribunal had regard to the test formulated by the House of Lords in Twinsectra -v- Yardley and Others [2002] UKHL 12. The questions for the Tribunal were: 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? The Tribunal on the facts as found had no hesitation in answering "yes" to both those questions.

### **The Tribunal's Decision and its Reasons**

25. This was a bad case of dishonesty. Furthermore it was wholly unacceptable that the Respondent had made payment to himself out of Ms G's estate as the residuary legatee ahead of the pecuniary legatees and had "milked" for costs in the matter of Ms EP's estate where the residuary beneficiary had been a charity.
26. The Tribunal accordingly ordered that the Respondent be Struck Off the Roll of Solicitors and further ordered that he pay costs fixed in the sum of £11,500.

Dated this 11<sup>th</sup> day of January 2007  
On behalf of the Tribunal

W M Hartley  
Chairman