

IN THE MATTER OF ELINOR ELAINE GENTLES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Ms A Banks
Mrs S Gordon

Date of Hearing: 12th December 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Margaret Eleanor Bromley solicitor of TLT Solicitors, One Redcliff Street, Bristol BS1 6TP on 26th April 2006 that Elinor Elaine Gentles of Scholes, Leeds, West Yorkshire, 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.

The allegations against the Respondent were that she had failed to comply with the Solicitors Accounts Rules 1998 in that:-

- (1) she failed to keep her books of account properly written up, to show the firm's dealings with client money received, held or paid by the firm in breach of Rule 32;
- (2) she failed to carry out client bank account reconciliations at least once every 5 weeks, in breach of Rule 32(7);
- (3) she withdrew money from client account other than in accordance with Rule 22;
- (4) she failed to remedy breaches of the Rules promptly upon discovery, in breach of Rule 7.

By a supplemental statement of Margaret Eleanor Bromley dated 19th July 2006 it was further alleged against the Respondent that:-

- (5) she had been guilty of conduct unbecoming a solicitor in that she failed to deliver an Accountant's Report to The Law Society for the period ended 31st March 2005, in breach of Section 34 of the Solicitors Act 1974.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 12th December 2006 when Margaret Eleanor Bromley 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 to allegations 1 to 4. The Applicant submitted to the Tribunal during the hearing a copy of a letter dated 13th June 2006 from the Respondent to the Applicant.

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

The Tribunal Orders that the Respondent Elinor Elaine Gentles of Scholes, Leeds, West Yorkshire, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 12th day of December 2006. If by the end of the fixed period of suspension the respondent has not filed with the Law Society the Accountant's Report for the period ended 31st March 2005, then the Respondent's Practising Certificate will be suspended indefinitely. The Tribunal further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,900.

The facts are set out in paragraphs 1 to 41 hereunder:-

1. The Respondent born in 1961 was admitted as a solicitor in 1990 and her name remained on the Roll of Solicitors.
2. At all material times the Respondent practised on her own account under the style of Elaine Gentles & Co. Until December 2004 the Respondent practised at 281 Roundhay Road, Leeds. Thereafter she practised from 15 Arthursdale Grange, Scholes, Leeds, West Yorkshire, LS15 2AW. The Respondent closed her firm on 30th September 2005 and started working as a consultant with Philip & Co.
3. An inspection by a Forensic Investigation Officer for The Law Society was commenced on 21st March 2005. A copy of the resulting report dated 5th August 2005 was before the Tribunal.

Failure to keep books of account properly written up to show firm's dealing with client money, received, held or paid by the firm in breach of Rule 32

4. The Investigation Officer, Ms Y, found that the books of account were not in compliance with the Solicitors' Accounts Rules.
5. Ms Y was informed by the Respondent that the cashier she had employed left the firm during March 2004. The Respondent said the books had been kept up to date until March 2004 but since that date she had had difficulty in finding someone to do the books and keep them up to date.

6. A list of client ledger balances as at 23rd March 2005 showed a total client debit balance of £34,582.58. Ms Y was unable to verify all the figures because of the lack of up to date postings.
7. Ms Y found that since the reconciliation carried out in November 2004, the receipts and payments had not been correctly posted to either the client ledgers, or the client or office cash books. The Respondent stated that the books were not up to date, as postings had not been made beyond January 2005.

Failure to carry out reconciliations

8. Ms Y asked the Respondent when the last client reconciliation took place and the Respondent stated that she thought this had been November 2004. Mr A, whom she had employed to do the books, left without notice in December 2004 and so the Respondent thought he would not have had the opportunity to prepare the December reconciliations.
9. The Respondent was asked what the present situation was with regard to carrying out reconciliations and she replied "I have learnt how to do them now, so I have done some in April".
10. Ms Y noted that the reconciliations made no reference to the designated deposit accounts. When asked about this, the Respondent said that this was new to her and she had not been aware of it.
11. The Respondent was asked if she had complied with the requirement to carry out 5 weekly client reconciliations and she replied "No, I haven't, it is something I can attempt to do now with the assistance of the software company".

Withdrew money from client account, other than in accordance with Rule 22

12. The Respondent informed Ms Y that a cash shortage existed on client bank account, as at 23rd March 2005, as a result of the incorrect transfer of funds from client bank account to office bank account and overpayment of client funds.
13. The cash shortage arose from overpayments to clients, totalling £4,755.64; over transfers of the firm's costs totally £4,680.05 and unauthorised withdrawals from client bank account totalling £1,383.64.
14. Full details of the transfers was set out in the Report. Two matters are exemplified below.
15. The firm acted for a relative by marriage of the Respondent in the sale of her local authority home and the purchase of a private property.
16. The fee-earner dealing with the matter failed to take account of a payment of £6,286.66 to Leeds City Council, when he was preparing the completion statement. As a result, the balance paid to the client on completion of the transactions was an overpayment by the amount of the payment to Leeds City Council.
17. The firm retained a retention released by the Mortgagee of £1,500.00 which reduced the sum owing to £4,786.66. Subsequently, the debit balance had been reduced to £4,487.66.

18. The firm wrote to the client on several occasions requesting the return of the overpayment without success and subsequently obtained judgement in default against her in the sum of £5,954.96. She had been ordered to repay the judgment debt at the rate of £100.00 per month.
19. Ms Y asked the Respondent why she had not replaced the funds into the client bank account and the Respondent replied “I didn’t have the money to”.
20. The firm acted for Mr L in a personal injury claim. On 9th October 2002 the firm received £2,250.00 in respect of costs and disbursements. This was paid into office bank account. On 21st October 2002 the firm transferred from client bank account to office bank account, the sum of £2,050.37 in respect of the firm’s costs. In December 2002 the balance on the client ledger was £617.81 and the firm paid the damages to Mr L of £2,756.31, leaving the client ledger in debit by £2,138.50. This remained in the position for a period in excess of 2 years.
21. The Respondent agreed the debit arose due to the duplication of the transfer of costs from client to office bank account.
22. The Respondent informed Ms Y that the firm’s bankers had transferred money from client to office bank account without her authority. The sums involved were £921.64 on 2nd March 2005 and £462.00 on 3rd February 2005. The Respondent said that they did it because the office account was overdrawn.

Failure to remedy breaches promptly upon discovery

23. Although the Respondent was aware of the shortages on client account, she was unable to make good the shortages. The following table set out in the Report showed the matter, the amount of the shortage, the date it came into existence and the date it was rectified.

Matter	Amount of shortage	Date arose	Date rectified
G	£4,487.66	November 2002	23 September 05
P	£267.98	October 2004	September 05
L	£2,138.50	December 2002	23 September 05
D	£2,541.55	November 2002	23 September 05
Client to office transfer	£462.00	3 February 2005	23 September 05
Client to office transfer	£921.64	2 March 2005	23 September 05

24. The Respondent agreed the shortages as set out above. In respect of the G matter (the Respondent’s relative) she said to Ms Y “if I had the money I would replace it straight away. Unfortunately, I do not have the money or the capacity to raise it at present, although I am trying all I can to replace the money in the account”.
25. In respect of the P matter she said that as it was a small amount she hoped to be able to pay it back quickly. In respect of the L matter she said she would repay as soon as possible.
26. In respect of the transfers made by the Bank, Ms Y asked the Respondent if she had repaid the money and the Respondent said “Not as yet. She confirmed that she was aware that the transfers created a shortage on the client bank account and that this was not in compliance with the Solicitors Accounts Rules.

27. In subsequent correspondence dated 8th September 2005 with The Law Society the Respondent explained the difficulty she had had following the departure of her book-keeper. She confirmed that the last client account reconciliation had been carried out in November 2004 and said that she would provide The Law Society with the August reconciliations in the next 14 days.
28. The Respondent confirmed she had read the Report of the Investigating Officer and “although some responses are not recorded in full, it does reflect what I stated to her”.
29. In a further letter dated 9th September 2005 the Respondent indicated that she had been unaware of the obligations to include the firm’s designated deposit accounts in the reconciliations. She indicated she only had a handful of designated deposit accounts. She said it was not true that postings were not made beyond January 2005, since postings were made by her including corrective postings during the period of the Investigation.
30. In respect of the minimum cash shortage, which had not been replaced, the Respondent made no comment. In respect of the debit balance relating to the matter of Mr P, the Respondent said that this had now been rectified. She also said the shortage in respect of the matter of Mr L could be rectified by the end of 2005. She made no comment in the matter of Ms D. In respect of the withdrawals made by the Bank, she confirmed she had not authorised the Bank to make these transfers and acknowledged that she had to rectify this transaction.
31. The Respondent wrote again on 26th September 2005. She indicated she had been able to borrow £10,700.00 which she paid into her client account on Friday to rectify the defective ledgers.
32. She indicated that she was still in the process of correcting the defective postings. She was transferring the ledgers where balances existed to her successor firm, Phillip & Co and she was due to cease as trading as Elaine Gentles & Co on 30th September 2005.
33. On 28th September the Respondent sent a fax to The Law Society, enclosing a Bank statement proving the deposit of £10,700.00 on 23rd September.
34. On 11th October 2005, the Respondent wrote again to The Law Society. She enclosed copies of the client ledger accounts that she had rectified. She stated she had rectified a further 8 ledgers and had been able to transfer all the money needed into client account.
35. The Respondent’s accounting period ended on 31st March and therefore her Accountant’s Report for the period ending 31st March 2005 needed to be delivered to The Law Society by 30th September 2005.
36. On 26th September 2005, the Respondent wrote to The Law Society notifying The Society that she was not intending to continue practicing under the style of Elaine Gentles & Co. She also requested an extension of time for filing of her Accountant’s Report. She requested six months from 30th September 2005 in order to file her final accounts.
37. The Law Society replied on 20th October 2005 explaining that two Accountant’s Reports would be needed, one for the period ending 31st March 2005 and the other to cover the period up until she ceased to hold clients’ money

38. By email dated 20th October from The Law Society, the Respondent was informed that the request for the extension to 31st March 2006 could be processed and that the request had been forwarded to the Compliance Directorate. She was advised that if she had not heard by March 2006 and she needed a further extension, then she would need to request an additional extension. The matter was considered by an Adjudicator on 21st February 2006 when she was granted an extension to 31st December 2005.
39. On 14th March 2006 The Law Society wrote to the Respondent indicating that her Report was overdue as it had not been received by 31st December 2005. They also asked her to inform them in writing of the exact date on which she ceased to hold the client money. No reply was received to that letter.
40. On 9th March 2006 The Law Society wrote again to the Respondent indicating that the Report had still not been received and requesting her explanation as to why it had not yet been delivered and when it would be delivered. No reply was received to that letter.
41. On 3rd July 2006 the Respondent wrote to The Law Society explaining that her Accountant had required a payment on account before undertaking work on her accounts. Due to financial hardship she was unable to meet the deadline for filing the Accountant's Report. She said that she hoped to have both sets of accounts, i.e. those for the period ended 30th March 2005 and those for the period up to when she ceased to hold clients' money, by the end of the month. She apologised for the delay.

The Submissions of the Applicant

42. The Respondent had in her letter to the Applicant of 13th June 2006 admitted the allegations contained in the Rule 4 statement. She had also stated that she had no counternotice to serve in respect of the Civil Evidence Act Notice served on her. A further Civil Evidence Act Notice had been served on the Respondent in respect of the supplementary statement and no counternotice had been received. The Respondent had the previous day sent a written statement to the Applicant and the Tribunal. While she did not deny the allegation contained in the supplementary statement she did not specifically admit it and the onus was therefore on the Applicant to prove that allegation.
43. In relation to the Accounts Rules breaches the Applicant accepted that the Respondent's books of account had been up to date until March 2004 when her cashier had left. The Applicant also accepted that the failure to carry out reconciliations arose partly from the Respondent's loss of her bookkeeper and the difficulty she had had in finding a replacement.
44. The Tribunal was asked to note however the length of time for which the shortages set out at paragraph 23 above had existed. The periods ranged from six months to two years ten months, which was a matter of concern. While the Respondent had sought to highlight the problems caused by the departure of her bookkeeper, it was clear that there were problems well before that. Some of the shortages dated back to 2002. There had been serious breaches of the Solicitors Accounts Rules.
45. In relation to allegation 5 the Tribunal was referred to the documentation and asked to note that the report was still outstanding, as was the cease to hold report although that did not form part of the allegations.

46. Compliance with the Solicitors Accounts Rules and other regulatory requirements including the filing of Accountant's Reports was essential to ensure that clients' money was not at risk and was part of the way in which the Law Society regulated the profession.
47. In the Respondent's statement she had made a number of allegations as to why she had, as she saw it, been "picked on". There was an implication that she had been chosen for inspection because she was black. The Respondent had produced no evidence to support this assertion and the Tribunal was asked to disregard it.
48. The Applicant sought an order for costs in the sum agreed with the Respondent of £8,900 which included the costs of the Forensic Investigation Officer.

The Submissions of the Respondent

49. The Respondent's submissions were set out in her written statement dated 9th December 2006 which is summarised below.
50. The Respondent set out her educational and professional history. She referred to difficulties she felt she had encountered as both a woman and black person en route to qualifying as a solicitor.
51. The Respondent explained the difficulties which had arisen after she had purchased the practice of her former principal and the steps she had taken in relation to setting up an accounting system. She said she had always taken her responsibility for the accounts seriously.
52. After legal aid had been withdrawn from personal injury work the Respondent had decided to take on immigration work although she said that in retrospect black professionals who obtained legal aid franchises for immigration work were eventually classed as Category III, accused of overcharging and had their fees withheld.
53. The Respondent also felt that a monitoring visit to her a firm was a fault-finding exercise due to the fact that her firm which was a black owned firm was now carrying out predominantly immigration work.
54. Despite investing heavily in immigration work the Respondent had received no remuneration from the Legal Services Commission in 2004 because of a clawback request some of which was for the files of her predecessor firm. The situation was compounded when the bookkeeper left. This coincided with the monitoring visit which was not signed off as the Monitoring Officer required a further reconciliation.
55. The Respondent described the difficulties she had had finding a suitable replacement bookkeeper, finally succeeding in October 2004.
56. A further monitoring visit took place in December 2004. The Respondent knew that there were errors of posting in the accounts and also that her cousin's wife had been overpaid on a conveyancing transaction, and that the overpayment needed to be put right.
57. The Respondent decided to close her firm and work from home. At the request of her landlord who needed the offices she moved out quickly on 2nd March 2005 and then received another letter from a Monitoring Officer asking for another bank reconciliation.

In the circumstances the Respondent could not comply. On 23rd March 2005 the Investigation Officer had come to her home. The Respondent said that she had notified the Law Society that she intended to move from December 2004 and said she would have delayed her departure had she known that an inspection was to take place.

58. The Respondent had not submitted references to the Tribunal as she had told only those that were closest to her about the proceedings.
59. The Respondent spoke of her positions of responsibility in the community and the church.
60. While recognising that the profession was entitled to monitor the performance of solicitors, the Respondent said that she believed that ethnic minority owned firms were either being deliberately targeted or were being unfairly picked on for monitoring by reason of illegal indirect discrimination.
61. She was aware of the importance of the Solicitors Accounts Rules and that they were there to protect the public, who had to have 100% confidence in the profession. She had done everything she could to protect the integrity of the profession.
62. The Respondent apologised for the problems she had caused but said that she had truly suffered. She had thought constantly about the proceedings. The fact of having been referred to the Tribunal was an indelible mark on her career regardless of penalty. The Respondent asked to be allowed to remain on the Roll. She did not intend to work as a sole practitioner or a partner again but did wish to retain her professional status, for which she had worked hard.
63. The Respondent set out information regarding her present difficult financial situation.

The Findings of the Tribunal

64. The Tribunal found allegations 1 to 4 substantiated, indeed they were not contested. The Respondent had made no admission or denial in relation to allegation 5. The Tribunal was satisfied from the documentation before it which had not been challenged that the allegation was substantiated.
65. The Respondent had not attended the hearing but the Tribunal had considered with great care the representations she had made in correspondence and in her written statement of 9th December 2006. The Tribunal noted the difficulties the Respondent had experienced in relation to obtaining the services of a bookkeeper. The difficulties with the accounts had however predated the departure of the Respondent's bookkeeper as was clear from the table at paragraph 23 above. The Tribunal noted that two of the matters in the table were bank errors but even setting those aside there had been substantial shortages on other matters which had existed for a long time. The Tribunal noted that the Respondent had taken steps in relation to the overpayment to her relative by means of obtaining a Judgement against the relative and the Tribunal noted that this had taken place before the inspection. Nevertheless, the Rules required that where shortages arose on client account a solicitor was under a duty to rectify them promptly whatever the difficulties. The Respondent had not done so. The Tribunal also noted in relation to allegation 5 that the Respondent was in continuing breach in relation to the filing of her Accountant's Report. The filing of Accountant's Reports was an essential part of the regulatory process for the protection of the public. While no dishonesty was alleged or found in respect of the Respondent the Tribunal was concerned at the serious

breaches of the Accounts Rules. The highest standards of stewardship of clients' money were expected of solicitors. The Tribunal would mark its concern by imposing a period of suspension of one year on the Respondent. If she remained in breach of the requirement to file her Accountant's Report at the end of that period she would be suspended from practice indefinitely. Given the Respondent's serious accounting failures the Tribunal recommended that the Law Society impose on any future Practising Certificate of the Respondent a condition that she practise only in approved employment or partnership.

66. The Tribunal ordered that the Respondent pay the Applicant's costs in the agreed sum.
67. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent Elinor Elaine Gentles of Scholes, Leeds, West Yorkshire, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 12th day of December 2006. If by the end of the fixed period of suspension the respondent has not filed with the Law Society the Accountant's Report for the period ended 31st March 2005, then the Respondent's Practising Certificate will be suspended indefinitely. The Tribunal further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,900.

Dated this 16th day of February 2007
On behalf of the Tribunal

W M Hartley
Chairman