

IN THE MATTER OF PETER JAMES SLEEP, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mrs K Todner
Mrs C Pickering

Date of Hearing: 29th April 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Ian Ryan, solicitor and partner in the firm of Bankside Law Solicitors of Thames House, 58 Southwark Bridge Road, London, SE1 OAS on 30th October 2006 that Peter James Sleep, solicitor of Tavistock, Devon, 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 Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:

- (i) that he failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (ii) that he failed to carry out reconciliations as required by Rule 32(7) of the 1998 Rules;
- (iii) that he withdrew money from client account other than in accordance with Rule 22 of the 1998 Rules;
- (iv) that he deliberately and improperly utilised clients' funds for his own benefit;

- (v) that he acted in such a way as to compromise or impair, or which was likely to compromise or impair, the following:
- (a) his independence or integrity and/or
 - (b) his duty to act in the best interests of his clients; and/or
 - (c) his good repute or that of the solicitors' profession.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 29th April 2008 when Ian Ryan 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 (i), (ii) and (iii).

At the commencement of the hearing the Tribunal considered a written application by the Respondent that the substantive hearing be heard in private. The application was refused by the Tribunal.

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

The Tribunal Orders that the Respondent, Peter James Sleep of Tavistock, Devon, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 29th day of April 2008 and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Officer of the Law Society.

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

1. The Respondent, born in 1955, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Sleep & Co Solicitors at 4 Plymouth Road, Tavistock, Devon, PL19 8AY.
3. Upon due notice to the Respondent, the Investigation Officer of The Law Society carried out two monitoring visits and an inspection of the Respondent's books of account and produced three Reports dated August 2003, April 2004 and 18th July 2006. The allegations all arose from the third Report.

Books of Account

4. The Investigation Officer reported that the firm's books of account were not in compliance with the Solicitors Accounts Rules for the reasons noted below.
5. The books of accounts had not been written up since 30th April 2004 and therefore the following records were not available:

- Cashbook entries for client bank account
 - Cash book entries for office bank account
 - Client ledgers
 - Reconciliation statements
6. In interview at the commencement of the inspection the Respondent explained that he maintained his own accounting records but, because he was busy, he had neglected this function.
 7. In view of the state of the accounts, the Investigation Officer was unable to establish the firm's liability to clients as at 31st May 2006 and as a result whether sufficient funds were available to meet those liabilities; however a minimum cash shortage of £1,468.75 was identified.

Allegation of utilising clients' funds for the Respondent's own benefit
Cause of the cash shortage

8. The cash shortage related to the matter of Mr M for whom the Respondent acted in connection with matrimonial proceedings.
9. The firm instructed Counsel, who charged £1,250 plus VAT (£218.75) for her services, £1,468.75 in all.
10. The Respondent wrote to Mr M requesting a cheque from him for £2,350 for a total of his costs and Counsel's fees. The client duly paid and his cheque, made payable to the firm, was banked in the firm's office account on 2nd May 2006. The element of these funds relating to Counsel's fees remained in the firm's office account at 31st May 2006. The firm's office account cheque book revealed a counterfoil recorded "Mrs C Owens Counsel's fees M16001".
11. When the Investigator Officer asked to see the file the Respondent informed him that this cheque to Counsel had not been despatched through an error. He agreed to settle the fee note immediately. At the conclusion of the investigation the Respondent produced a receipted Counsel's fee note dated 29th June 2006.
12. In the course of his inspection the Investigation Officer discovered further examples of the Respondent either receiving money into office account in respect of disbursements, or transferring money from client to office account in respect of the same and then failing to pay those disbursements, thereby having the benefit of those funds during the period in which the disbursements were not paid.
13. Examples of this practice are as follows:
 - (i) the Respondent's failure to send office account cheques to the Land Registry for a period of almost seven weeks after he had transferred the funds from client account;

- (ii) the Respondent's failure to send office account cheques to the Inland Revenue for stamp duty for periods of between four and six weeks after he had transferred the funds from client account.
14. At the relevant time the Respondent by his own account had serious financial and cashflow difficulties including the following:
- He had recently settled a claim from the Inland Revenue by way of a bankruptcy petition in the amount of £30,322.38.
 - He had failed to lodge any VAT returns since December 2001.
 - He had a bank overdraft of £70,000 and a business loan of £70,000.
15. The Respondent was written to by The Law Society for an explanation in a letter dated 28th July 2006 and replied by letters dated 10th August 2006 and 21st August 2006.

The Submissions of the Applicant

16. The Respondent had admitted in correspondence allegations (i)-(iii). In correspondence in January 2007 the Respondent had indicated that allegation (iv) was admitted but in recent correspondence he had indicated that it was denied and the Applicant would treat it as a contested allegation. The Applicant sought and obtained the leave of the Tribunal to amend the Rule 4 Statement to clarify that the allegation of dishonesty related to allegation (iv) not allegation (ii). The Respondent had brought this error to the attention of the Applicant.
17. The Applicant said that the shortage (paragraph 7 above) had been corrected. It was nevertheless a serious matter if an Investigation Officer could not compute a solicitor's liabilities to his clients.
18. The Applicant took the Tribunal in detail through the paperwork which he submitted supported allegation (iv). The continued failure to pay disbursements (after the money had been paid or transferred into office account) had the effect of keeping the Respondent's practice under its overdraft limit at a time when the Respondent had serious financial and cashflow difficulties as set out at paragraph 14 above.
19. The Tribunal was referred to the transcript of the interview of the Respondent by the Investigation Officer. In relation to the matter of M and Counsel's fee the Investigation Officer put to the Respondent that nearly two months after receipt the fee had only been sent to Counsel after the start of the inspection and asked for an explanation. The Respondent replied "Yeah, that one I sat on knowingly." The Tribunal might wish to take into account this response when considering dishonesty. The firm had had the benefit of the money for approximately six weeks.
20. The Tribunal was referred to the examples in the Report of late payment of stamp duty when the money was in office account. In the example of the matter of Ms D the firm had the use and benefit of £1,300 of clients' funds for approximately six weeks.

In his interview with the Investigation Officer it was put to the Respondent that he had taken the money from client account to office account by way of a cheque on 27th April 2006 at a time when he was not in possession of the Stamp Duty Land Tax Return. The Respondent said that the client had said she would give the Return to him and had not done so. Asked why he had transferred the money on that particular day when he was not in a position to pay the stamp duty the Respondent said:

"Because she said she was going to bring it in and she still didn't that's why I had to write to her again in May, but yes I took a punt and I was wrong so I'm stuck with it."

21. In the matter of Mr B the firm had the use and benefit of £1,780 of clients' funds for a period of nearly four weeks. The Report set out a further similar matter by way of example. No admission had been made by the Respondent but the cheque for stamp duty had been drawn before he had the forms for the procedure.
22. The same circumstances had arisen in the case of the clients PM and AT.
23. In considering dishonesty the Tribunal was referred to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 in which it was said by Lord Hutton:

"Thirdly, there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

24. The Tribunal might wish to consider the Respondent's explanations in the matter of Mr M (paragraph 11 above) and his further explanation to the Investigation Officers (paragraph 19 above). In fairness to the Respondent he had said that sometimes he took money from client to office account to pay a disbursement on the same day but "bought" a few days while the cheque cleared. The Applicant was not suggesting that that was necessarily improper, although it was unusual. What had happened however was that the Respondent had had the benefit of the money not for two or three days but for six or seven weeks and in the submission of the Applicant that was dishonest. The Respondent had either been deliberately dishonest by failing to pay disbursements within a reasonable time and thereby utilising clients' funds for his own benefit or had deliberately closed his eyes to the position and failed to take any steps to remedy the situation.
25. If the Tribunal did not feel that the Respondent had acted deliberately in the sense referred to in the case of Twinsectra v Yardley the Tribunal was asked to consider whether the Respondent had deliberately closed his eyes to the correct course of action which he should have taken. This had been accepted as dishonesty in a slightly different way in the case of Royal Brunei Airlines v Tan [1995] 2AC 378 in which it had been said:

"Nor does an honest person in such a case deliberately close his eyes and ears, or deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless."

26. The Tribunal was referred to the Respondent's comments to the Investigation Officer that:

"There were various times in that period when there would be money there to meet it for example. Just Ostrich about it."

and

"I'm not saying every day that I thought 'can I afford them today?', it wasn't like that. I would simply blot them from my mind for ages."

27. The Respondent had further said:

"The decision is actually getting to the point where I can't ignore the fact that I haven't sent it and sending it. I just say again that there will be a number of occasions in the intervening period when I could accept it and it would have been met, but a day comes and it goes and I don't do it. It just wasn't that kind of everyday deliberate. I am by nature an Ostrich. One benefit of growing up is you admit your failing whereas I used to deny it. I am an Ostrich. I get Ostrich about all kind of things, domestic as well as professional and I could blot it out of my mind for days at a time, but there was no kind of moment when I thought 'I must send that today' or 'I can send that today'. It was 'I can send that today.'"

28. Asked whether he could put a ceiling on when he thought his conduct would become dishonest the Respondent replied:

"No because I satisfied myself that the principle was okay. No I mean it isn't kind of honest for a week and then dishonest for a week. It is wrong and it may be dishonest to the objective observer. All I'm saying is I don't see myself as a dishonest guy when I come out of Safeways with a tub of butter I haven't paid for I go back in and pay for it. When you're really squeezed in here you can persuade yourself not and because I knew I would pay it and because it wasn't money the client would come and say "can I have it back please" because it ain't their money effectively. It's the Revenue's money."

29. When considering the Respondent's state of mind it was pertinent that the August 2003 monitoring visit identified a number of un-presented cheques and a number of outstanding registrations and that the April 2004 visit noted the position with regard to the accounts, ongoing difficulties with registration and stamping and a number of outstanding cheques to the Land Registry. Either the Respondent was operating the same system then or if not he had been put on notice that there were some difficulties with those issues. The second monitoring visit also referred to up to date books of account not having been maintained. The Respondent in his initial interview with the Investigation Officers had confirmed that he was responsible for the day to day maintenance of the books and records and that he was the only fee earner.

30. The Respondent had also confirmed the financial difficulties with the firm. Between April 2006 and June 2006 he was on or around his overdraft limit the whole time and it was therefore imperative for him to have money in his office account.
31. If the Tribunal did not find one of the two kinds of dishonesty referred to above then the Tribunal was invited to find in the alternative that the Respondent had been reckless.
32. The Respondent had accepted the interview notes.
33. On 10th January 2007 the Respondent had written to the Applicant and said:

"My position on the allegation of dishonest is to say:

1. I did not ask myself whether my conduct was either honest or dishonest. Had I done so I would not have considered it dishonest in the criminal sense (and I do not think that is the allegation).
2. I did not deliberately set out to delay sending out office payments for which I had transferred monies from client account but I let that delay then occur and I was conscious of that delay. I therefore knew that I was in breach of one of the fundamental rules and that it was professionally improper."

This was something the Tribunal would take into account.

34. The Applicant clarified that the reference to the previous monitoring visits was relevant to the Respondent's state of mind but that those visits did not form part of the allegations.
35. The Applicant was not alleging large scale fraud rather that when the Respondent needed to because he was near his overdraft limit he did not send out cheques.
36. In relation to allegation (v) the Report had noted that the Respondent had failed to lodge any VAT returns since December 2006 thereby in the submission of the Applicant breaching Practice Rule 1(a) and (d) in the way set out in allegation (v). The Respondent had indicated that Customs & Excise had forgotten him. He had however recovered VAT from the clients and had not sent it on to the Revenue. This was not an allegation of dishonesty but the Tribunal was asked to find it substantiated. The Applicant further submitted that the Respondent's failure to stamp or register property transactions on behalf of clients within the relevant time limits was a breach of Practice Rule 1(c). He had received money from clients and had not passed it on. His failure to register title was not in the clients' best interests.

The Submissions of the Respondent

37. The Respondent's submissions were set out in his letter to the Tribunal of 25th April 2008.

38. The Respondent explained that he would be unlikely to attend the substantive hearing as he had a fear of making a public spectacle of himself. He appreciated that by failing to offer himself up for cross-examination he ran the risk of his evidence being given little weight. He lacked the means to engage an objective advocate.
39. The Respondent gave details of the history of his practice which was established in January 1997 and closed in September 2006. Throughout that period he had been in daily contact with his office even if on holiday. His mind had never been free of the problems of clients or the business and the Respondent considered that inevitably in those circumstances one became increasingly jaded and disinterested.
40. The Respondent had been at all times his own cashier/accounts manager.
41. Up until 2003 the Respondent's Accountant's Report was usually delivered within a couple of months of his year end and was always unqualified.
42. Difficulties had arisen from November 2003 when he had acquired by purchase the practice of another sole practitioner. This had been a disaster. The Respondent said that he had been at fault for undertaking less than adequate due diligence with the result that he inherited an overstuffed, ramshackle and lazy complacent business which was not able to perform as had been purported during negotiations. It had taken months to reconcile the other firm's client account to the point where the Respondent felt it was safe to post it on to his system. The other sole practitioner had remained as a consultant but had been reluctant to integrate the two practices which had caused real distractions for the Respondent. The Respondent had found himself with an increasing volume of client work to do as well as maintaining the accounts records. The Accountant's Reports for the year ending 2003 and April 2004 were filed on time but only just and each was qualified to the extent that there had been periods when postings had not been up to date with reconciliations consequently being done at greater than the five week intervals required.
43. In 2004 having taken a bank loan the Respondent had struggled to identify how correctly to post and show this on his computerised account records and instead of seeking advice he had let the situation continue and continue to slip until he was months behind. He had then had staffing difficulties which added to his workload and was having difficulty coping. He seemed to be "fire fighting" files and clients.
44. From March 2005 the Respondent and his secretary were the only people working in the firm. The secretary, who was excellent, had undertaken the lodging of all stamp duty and Land Registry applications. When she had taken maternity leave the Respondent had found it difficult to find a suitable temporary secretary and he was effectively without administrative assistance for much of March, April and May 2006.
45. In April 2006 the Respondent had suffered a family bereavement prior to which he had spent a great deal of time at the hospital, which in the absence of his secretary meant that his office was closed for much of the time during normal hours which made it impossible for the Respondent to keep a grip on things.

46. The Respondent said that many of the problems he had faced in the latter part of his practice were of his own making though nonetheless real for that. Some of the problems had not been of his making.
47. By late 2005 the Respondent, who was losing or had lost control of his practice, felt overwhelmed and could not see any structured way out. No interest had been expressed in taking over his practice and he had therefore resolved even prior to the investigation that he would close the practice. He also knew that bankruptcy proceedings would be likely at some point and that it would be better to cease trading.
48. The Respondent denied dishonesty. He understood why the allegations had been made. He had made no secret of the fact that he had a constant financial struggle and always ran on overdraft and was looking for ways to improve cashflow.
49. The Respondent set out his intended system of paying disbursements from office account and transferring the corresponding sum from client account to cover them rather than paying the disbursements direct from client account. In practice it would take a few days for the office account cheque to clear whereas the money from client account was immediately credited to the office account. The important thing was to ensure that the office payment was sent no later than the transfer from client account. The Respondent accepted that that had not happened in the instances highlighted by the Report.
50. While the Respondent had been trying to improve cashflow he denied deliberately and clear-headedly deciding to postpone the despatch of cheques drawn on office account. The Respondent referred to the strain and disarray under which he was working particularly in the period of his secretary's absence and his relative's illness in hospital. The Respondent was for example drawing cheques for stamp duty in the hope that his secretary would be able to complete the relevant form and send it off during the weekly visits which she continued to make to the office during her maternity leave. The Respondent accepted that he should not have worked on expectation or hope but rather on certainty.
51. The sums of money involved were small, at any one time no more than £1,000 or £2,000. The Respondent did not put that forward as a justification as he accepted that a penny was too much but rather to support his contention that he did not set out deliberately to manipulate his accounts. He could have borrowed sums of that size from family had he wished.
52. The Respondent had always considered himself to be an honest man and found real difficulty in being accused of dishonesty. He accepted that he had been unwise and probably reckless. He had been under immense strain and had been watching his practice unravel but had not been dishonest or did not consider himself to have been acting dishonestly. The Respondent said that in fact he was not thinking much at all.
53. The Respondent set out the reasons he had sought to change his accounting year and said that this did not suggest that he was seeking to hide any misdemeanours.
54. The Respondent accepted that the requirement to have accounts posted up to date and reconciled was an absolute one. He did not seek to detract from that. He emphasised

however that the paper records from which the postings were done were always up to date. He had a central record of each financial transaction which in case identified the client, the matter, the type of transaction, whether it was office or client and the amount. Additionally each client file had information on it to show all transactions. The Respondent was therefore readily able to determine at any time the financial status of a client file. He had not been blindly issuing cheques oblivious to whether or not funds were available to meet them. This documentation had been produced to the Investigating Officer on the first day of the investigation and this had given the Investigation Officer a very clear paper trail from which to work. All the transactions which were the subject of complaint in the Report have been properly recorded, were readily identifiable and were always going to be identified when the accounts came to be examined. The Respondent put this in support of his denial of dishonesty. He submitted that someone with dishonest intent would have done something to try to disguise what they were doing.

55. The investigation had not gone back beyond October 2005 although the Respondent had made earlier records available. The Respondent respectfully submitted that it would not be appropriate for the Tribunal to speculate that they had been shown a sample of improper transfers. The Respondent was adamant that the transfers before the Tribunal were the only examples. All of the accounting records dating back to January 1997 were either in the possession of the Respondent or of his Trustee in Bankruptcy or of The Law Society's agent and could be made available for forensic assessment.
56. The Tribunal was asked to note that there had been no loss to any client. The investigation identified the minimum cash shortage referred to above as at 3rd May 2006. This related to a transfer from client account to office account where the office account cheque had not been sent but subsequently was.
57. The Tribunal was asked to note that the Respondent had cooperated fully with the Investigating Officer and with the Solicitors Regulation Authority.
58. The Respondent continued to deny dishonesty. If the Tribunal found to the contrary it was invited to conclude that his motivation must have been desperation not greed. The Respondent had been a man at the end of his tether.
59. In relation to sanction the Respondent understood that the Tribunal's primary motivation was to protect the public. The Respondent asked however that the Tribunal not strike him off the Roll.
60. By the end of June 2006 the investigation had identified the matters which formed the basis of these proceedings. Six weeks later the Solicitors Regulation Authority indicated that they were considering an intervention. The Respondent defeated that proposal on the basis that there was no clear and immediate risk to the public and that as the Respondent had been permitted to continue operating his practice after the investigation no such risk could properly be said to exist. The Respondent continued to practise until 30th September 2006 without any supervision. The Respondent had offered to provide accountant's reports on his conduct of the accounts but the Solicitors Regulation Authority had not taken this up.

61. The practice had closed on 30th September 2006 but the Respondent held residual client funds and his practising certificate continued until 31st October 2006 thus enabling him to sign client account cheques through to that date. The Respondent then made arrangements for another solicitor to sign cheques for him as he ran down his client account. This arrangement continued until November 2007 when the Solicitors Regulation Authority intervened into the remnants of his practice, ostensibly because he was bankrupt but in the submission of the Respondent really because he could not make headway in storing old files and there remained some client balances to distribute.
62. The reality therefore was that the Respondent had been permitted to operate his client account without supervision for some four months after the investigation and had access to it for a further 12 months after that as no-one had notified his bank until the intervention that he could not sign client account cheques. Against that background striking the Respondent's name off the Roll would seem perverse.
63. The Respondent had no desire ever to practise again. The existence of the proceedings had prevented him coming off the Roll voluntarily. He would be happy to undertake to apply to come off the Roll and never to seek reinstatement.
64. His bankruptcy did not prevent the imposition of financial penalties and liability for costs as the liability would postdate the bankruptcy.
65. In the last two years the Respondent had lost his business and was probably about to lose his home. He had been declared bankrupt. He had barely worked, had no self-respect and a considerable fear for the future. The Respondent sought the leniency of the Tribunal.
66. The Tribunal had before it also a letter from the Respondent dated 8th April 2008 setting out health problems and further details of his financial difficulties.

The Findings of the Tribunal

67. Allegations (i), (ii) and (iii) had been admitted by the Respondent and the Tribunal found them to have been substantiated.
68. The Respondent in his written submissions had neither admitted nor denied allegation (v). The Tribunal considered the allegation carefully but was satisfied for the reasons submitted by the Applicant (paragraph 36) above that allegation (v) was substantiated. Allegation (v) had not been put as an allegation of dishonesty and was not at the most serious end of scale.
69. The most serious allegation against the Respondent was allegation (iv) which was an allegation of dishonesty. The Tribunal had considered very carefully the test set out in the case of *Twinsectra v Yardley* which was the appropriate test. The Tribunal had to be satisfied on both the objective and subjective limbs of that test. The Tribunal considered carefully all the information before it including the responses of the Respondent during the interview with the Investigation Officers. The Tribunal had some concerns about accepting those responses, made without the benefit of legal advice, and without prior warning of the questions as prime evidence of dishonesty

particularly in the absence of the Respondent at the hearing. The Applicant had relied in particular on the Respondent's comment in relation to the matter of Mr M (paragraph 19 above). The Tribunal made no criticism of the Applicant for bringing the allegation of dishonesty. Having considered the totality of the evidence however and the submissions of the Respondent the Tribunal did not consider that the allegation of dishonesty had been substantiated to the required high standard. The Tribunal was not persuaded that the Respondent had considered that his conduct was dishonest or would be perceived as dishonest. It was right to say that he had closed his eyes to strict adherence to the Rules and his answers showed that his behaviour had in fact been reckless. To that extent the Tribunal found allegation (iv) to have been substantiated but the allegation of dishonesty was not substantiated.

70. In relation to sanction the Tribunal took careful note of the points made in mitigation by the Respondent. The Respondent had said that he did not wish to practise as a solicitor in the future although he had recognised the Tribunal's duty to protect the public. While no client had suffered loss from the Respondent's actions the Tribunal noted that by his own admission he had felt unable to cope and had felt overwhelmed with the burdens of practice. It was clear from the medical evidence before the Tribunal and the Respondent's correspondence that the Respondent had had and continued to have health difficulties. The Tribunal having considered very carefully all aspects of this matter had concluded that the appropriate sanction was the imposition of an indefinite period of suspension.
71. The Applicant had sought his costs including the costs of the Investigation Officer and had asked that these be assessed if not agreed given the Respondent's absence and the Tribunal was satisfied that this was the correct order.
72. The Tribunal Ordered that that the Respondent, Peter James Sleep of Tavistock, Devon, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 29th day of April 2008 and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of Investigation Officer of the Law Society.

Dated this 2nd day of September 2008
On behalf of the Tribunal

D J Leverton
Chairman