No. 9644-2007

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF TERENCE JEFFREY SOPEL, solicitor (The Respondent)

Upon the application of Geoffrey Williams QC
on behalf of the Solicitors Regulation Authority

Mr. D. J. Leverton (in the chair)
Mr M. Fanning
Lady Bonham Carter

Date of Hearing: 2nd February 2011

FINDINGS & DECISION

Appearances

Geoffrey Williams QC, instructed by Jonathan Greensmith of Messrs Russell Jones & Walker solicitors of 50-52 Chancery Lane, London WC2A 1HL, appeared for the Solicitors Regulation Authority ("SRA").

The Respondent appeared and was represented by Ian Ryan, Solicitor, of Finers Stephens Innocent, 179 Great Portland Street, London W1W 5LS.

Allegations

The Applicant sought leave of the Tribunal and with the consent of the Respondent to amend allegation 6 under Rule 11(4) (c) and to withdraw allegation 5 under Rule 11(6) of the Solicitors (Disciplinary Proceedings) Rules 2007 and the Tribunal agreed. The allegations against the Respondent in their amended form were as follows:

1. That the Respondent improperly caused or allowed a cash shortage to arise on Client Account of £35,020.70, as at 31 December 2005, which was not rectified in full until 17 March 2006, contrary to Rule 7(1) Solicitors Accounts Rules 1998.

2. Between 30 August 2002 and 31 December 2005 the Respondent made overpayments and over transfers from client to office account in the total sum of £12,590.38, contrary to Rule 22(5) Solicitors Accounts Rules 1998.

3. Between 19 November 2004 and 23 March 2005, the Respondent with conscious impropriety, made 218 transfers from client to office bank account totalling £22,430.32 in respect of costs when bills had not been delivered to the clients concerned and in some cases when those costs were not due to the Firm in any event, contrary to Rules 19(2) and 22(1) of the Solicitors Accounts Rules 1998, and in so doing was dishonest.

4. The Respondent failed to record office account transactions relating to client matters on the office side of client ledgers since the formation of his practice in May 2000, contrary to Rule 32(1) and (4) Solicitors Accounts Rules 1998.

5. [Withdrawn]

6. The Respondent acted in a transaction where his own interests conflicted with the interests of clients.

The Respondent admitted the allegations as amended, save that in respect of allegation 1 he asked the Tribunal to determine whether the admitted facts constituted a breach of the Solicitors Accounts Rules. In respect of allegation 3, while the Respondent admitted the allegation he denied that his conduct had been dishonest.

Factual Background

1. The Respondent was born in 1949 and admitted to the Roll of Solicitors in December 1977.

2. At all material times the Respondent had carried on practice as a sole practitioner in the style of Sopel & Co, Bow, London. He established the practice in 2000 and conducted mainly conveyancing. The Respondent was currently employed as a consultant by AJLO Solicitors, Cambridge Heath Road, London. There were conditions on his practising certificate.

3. On 15 November 2006 an Adjudication Panel of the Law Society resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

4. The Adjudicator's Decision was based upon a report prepared by Law Society Investigation Officer (IO) Mr R Ferrari dated 23 May 2006 (the FI Report).

5. The FI Report arose from an inspection commenced on 17 January 2006 at the Respondent's practice. The books of account were not in compliance with the Solicitors Accounts Rules because:-

   (i) There was a client account shortage recorded on 31 December 2005 of £35,020.70;

   (ii) Individual client ledgers were maintained but only the client transactions were recorded. Office account transactions relating to individual client matters were not recorded on the relevant client ledger accounts for any clients.

<u>Allegations 1 and 2</u>

6. Mr Sopel agreed that a cash shortage existed in respect of debit balances on client

account as at 31 December 2005. He confirmed that amounts totalling £12,590.38 were transferred from office to client bank accounts between 12 January 2006 and 31 January 2006 to correct the shortage created by the debit balance. The debit balances varied from £0.01 to £2,126.88. It was established that the debit balances arose during the period 30 August 2002 to 31 December 2005, due to over payments and over transfers from client to office bank account in excess of the sums held on client bank account for the clients concerned. The two largest matters were dealt with in the FI Report.

7. In the first, the case of Mrs EP, there was a debit balance of £2,126.88. This was caused by an error on the Completion Statement resulting in an over payment to the client of £1,980.00 and a bill of costs in respect of Wills for £146.88 was posted to the ledger but not included within the completion statement. The cash shortage was replaced by a transfer from office to client bank account on 30 January 2006, three months after it had been created. However, this meant that other clients' money had been utilised in order to complete Mrs EP's matter.

8. In the second case, A. Limited, there was a debit balance of £1,428.94. On 5 January 2005 Stamp Duty Land Tax was paid in the amount of £2,200 when only £2,042 stood to the credit of the ledger and further payments were made from the account on 6, 17 and 18 January 2005 increasing the debit balance to £1,428.94. This was replaced by a transfer from office to client bank account of £1,000 on 12 January 2006, and a payment of £428.94 from A Limited on the same date. The Respondent accepted that the shortages remained in existence for a year and that other client funds had been utilised in order to make payments on behalf of A Limited.

9. Some of the shortages were corrected five days before the FI Investigation began and some in the fortnight after the IO's visit. It was clear from a schedule of client ledger account balances as at 31 December 2005 that the debits had arisen over a period, one from August 2002, eight from 2003 and the remainder subsequent to that.

Allegation 3

10. There had been 218 client to office bank account transfers between 19 November 2004 and 23 March 2005 totalling £22,430.32. They ranged from £0.01 to £1,493. The FI Report detailed three instances where the Respondent agreed that the residual balances comprised client monies that were due to the clients and not to the firm.

11. The Respondent acted for Mr KA in the transfer of a lease of commercial premises which completed on 13 September 2000. There was no further contact with the client until 15 July 2003 when the firm forwarded a client account cheque for the balance remaining on the ledger of £231.73 to Mr KA. The client account ledger did not record the payment and the cheque was not presented. The client account ledger recorded that on 14 January 2005 a bill of costs in that amount in respect of "post-Completion Queries" was drawn up, and the amount transferred from client to office bank account. Mr KA contacted the firm on 6 June 2005 requesting that the cheque that he had been sent in July 2003 be amended so that he could present it. Mr Sopel amended the cheque and sent it back to Mr KA on 11 July 2005. An office to client bank account transfer was done in the same amount. Again, the cheque was not presented and on 12 January 2006 the balance on the ledger of £231.73 was transferred back to office account in relation to a bill of costs dated 1 December 2005

for "additional attendances". Neither bill bore an address of the client and neither was sent to the client.

12. The case of Mr SM related to an abortive lease purchase. The last communication with the client was a letter dated 9 March 1999. No further work was done for the client. He was billed in April 1999 but a balance of £241.25 remained on client bank account until it was transferred to office on 1 March 2005. A bill of costs dated 29 November 2004 for that amount stated that it was in respect of "our professional charges for attendance in connection with.... post-completion queries". Again, the bill did not bear the client's address and was not sent to the client.

13. In the case of Mr TG, completion of the purchase of a property took place on 25 May 1999 leaving a balance of £246.72 on client account. On 9 May 2000 an amount of £42.33 was mistakenly accredited to Mr TG's ledger. The resulting balance of £289.05 remained in client bank account until 1 March 2005 when it was transferred to office bank account in settlement of a bill of costs dated 26 November 2004 in the same amount for "post-completion queries". No work had been done for the client since July 1999.

14. The FI Report included a schedule detailing the 218 transactions. It showed that client account cheques were issued covering batches of client balances from time to time.

Allegation 4

15. Mr Sopel had confirmed to the IO that office account transactions relating to client matters had not been recorded on the office side of the client ledgers since May 2000. At the date of the report office account transactions were still not being recorded on the office side of the client ledgers, although Mr Sopel had stated that he was planning to introduce a new accounting system that would record office account transactions.

Allegation 6

16. The Respondent acted in the incorporation of a company A. Ltd, which was controlled by one of his children. He also acted for it in the purchase of premises which A. Ltd then sub-let to his practice. The Respondent acted for himself and the company in the sub-letting transaction to his firm. Rent was calculated by reference to mortgage payments, service charge, property maintenance and accounting fees. The Respondent did not advise A. Ltd to seek independent legal advice. The deposit monies for the purchase of the office premises came from a probate matter where the Respondent was the executor of his late father-in-law's estate, under which the Respondent's three children were equal beneficiaries. At the time of the purchase, only the eldest of the Respondent's children, who controlled A. Ltd, had attained majority.

History of the Tribunal Proceedings

17. The Rule 5 Statement was dated 24 January 2007. On 20 September 2010 an application had been made by the Respondent for the proceedings against him to be stayed or struck out as an abuse of process and/or by reason of a breach of the reasonable time requirement in Article 6 in the ECHR. Following a directions hearing on 11 September 2007 there had been no further action in the matter until 30 April

2010 when further directions had been given and the matter had been taken over by the late George Marriott of the Applicant's instructing solicitors' firm. At the directions hearing on 20 September 2010 the Tribunal had refused the application to strike out the proceedings. It had accepted that the period of delay between the directions hearings in 2007 and 2010 had been unacceptable and had resulted in a breach of Article 6, but was satisfied that the Respondent would be able to receive a fair hearing before the Tribunal because of the comprehensive documentation in the proceedings. It also indicated that the issue of whether there should be any compensation for the delay should be dealt with at the end of the substantive hearing.

18. The Tribunal reviewed documents submitted by the Applicant including:

(i) Rule 5 Statement dated 24 January 2007, with exhibits;

(ii) Bundle of six bills drawn by the Respondent;

19. The Tribunal reviewed documents submitted by the Respondent including:

(i) The Respondent's witness statement dated 28 January 2011, with exhibit TJS3 his witness statement dated 7 September 2007 and exhibit TJS4 (exhibits TJS1 and TJS2 were no longer relied on).

(ii) A bundle of 25 testimonials in respect of the Respondent's character.

Witnesses

20. The following persons gave oral evidence:

Mr Israel Malcolm Freiberger confirmed the truth of his witness statement dated 26 January 2011

Mr Jeremy Lewis, solicitor and partner in AJLO Solicitors, to which the Respondent was currently a consultant, confirmed the truth of his testamentary letter dated 24 January 2011.

Findings as to Fact and Law

Allegation 1

21. This allegation related to an alleged breach of rule 7(1) of the Solicitors Accounts Rules and a cash shortage on client account of £35,020.70. The Respondent had admitted the cash shortage and asked the Tribunal to determine whether his actions in respect of rectifying it constituted a breach of the Rules. The Applicant had submitted that it was clear from the notes to the Solicitors Accounts Rules that breaches must be put right promptly upon discovery, which meant on the same or the following working day, and that the period taken for rectification had been far too long. The Respondent had needed to raise funds in order to rectify the shortage, and was not able to do that immediately. The Tribunal found allegation 1 to have been proven. It considered that the cash shortage should have been rectified immediately. The Respondent knew what the position was, and that it had built up over a period of time, and not been dealt with. The Tribunal found allegation 1 fully proved.

Allegation 2

22. This allegation related to overpayments and over-transfers from client account to office account in the total sum of £12,590.38. The Applicant had submitted that this was a serious allegation in itself and because of the time span of its occurrence. The allegation had been admitted and the Tribunal found it to have been proven.

Allegation 3

23. This allegation related to 218 transfers from client to office bank account totalling £22,430.32 and was coupled with an allegation of dishonesty. The conduct had taken place over a period of months. No admissions of dishonesty had been made at any stage and the Applicant sought to raise an irresistible inference of dishonesty from the facts and circumstances such as would satisfy the twin test in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. He submitted that the Respondent had created bills equating to historic balances on client account. The bills had not been sent to clients and money to discharge them had then been transferred from client to office account without the client's knowledge. The headings and narratives in the bills contained untrue statements and constituted a sweeping up exercise. The Applicant submitted that the conduct fell within the ambit of the case of Weston v The Law Society, 29th June 1998, CO/225/1998, which described the solicitor's duty when holding anyone else's money to exercise a proper stewardship in relation to it. That was violated if one solicitor with the duty to see that the rules were observed failed to do so. The Applicant submitted that even if the Court did not find dishonesty, the Respondent's conduct amounted to a dismal failure to perform his duty of stewardship. The Respondent had acted for his own convenience. He was a very experienced solicitor, specialising in conveyancing; a field where the Solicitors Accounts Rules have considerable impact. There was no suggestion of financial pressure or greed on the part of the Respondent. The honest option would have been for him to send bills to clients if work had actually been done, or to return money to them, as he had now done. The Respondent well knew how to bill clients, as he had prepared some 6,000 bills during his professional career correctly. He had referred to this in one of his statements. He had acted clandestinely. His actions had been deliberate, rather than sloppy, and he had made a conscious decision to prepare the bills.

24. The Respondent's representative informed the Tribunal that his client offered no excuses but rather explanations in respect of this allegation. He drew the Tribunal's attention to the various references submitted on behalf of the Respondent, attesting to their confidence in the Respondent's honesty and integrity. The referees included one particularly eminent individual from the legal world. The Respondent's representative submitted that the fundamental question was why a solicitor of 20 years' standing and good character, a religious man and a pillar of the community, should suddenly decide to act dishonestly for relatively small amounts of money. Monies had not been taken for his personal gain in the usual sense of the phrase; they had been taken to, but not for his benefit. He did not need the money to bolster office account. Rather he had taken it in order to tidy up his ledgers. It was the Respondent's representative's submission that the evidence led away from dishonesty and to an alternative explanation for his behaviour. It was submitted that he was not in his right state of mind by reason personal pressure including bereavement and had not given proper consideration to the implications of what he was doing. The Respondent accepted that what he had done was wrong, unjustified and for his own

convenience. The Tribunal was asked not to interpret to the Respondent's detriment his change of position in respect of the allegations, as set out in his more recent statement. He had come to his representative for advice. The advice he had received was robust and he had accepted it immediately and without question. In doing so, he moved closer to the allegations rather than further away and this was reflective of his character.

25. The Tribunal regarded this as the most serious allegation, as it was coupled with an allegation of dishonesty. The Tribunal had read the papers in the case and had regard to submissions made by the Applicant and by the Respondent's representatives. They had also read the impressive collection of references submitted on the Respondent's behalf, and heard from two character witnesses in the witness box. The Respondent had admitted the facts but denied that they constituted dishonesty in respect of this allegation. The Tribunal had been referred to the cases of Re Weston and Re Bolton. The Tribunal was quite satisfied that the Respondent had deliberately transferred clients' money to which he was not entitled, and tried to cover the position by creating false bills, which were for fictitious work and never sent to the client. He had made no attempt to contact the clients in question, and transferred monies totalling some £22,000 over a period of some 18 months. The Tribunal particularly noted that in the case of Mr KA, when the client had made contact, and asked for his money to be returned, the Respondent had dealt with the matter but not changed his pattern of conduct thereafter. He knew that he was not entitled to the money and tried to cover his tracks by the creation of false bills. The Tribunal found in all the circumstances of the case, that the Twinsectra test was fully met. His conduct was dishonest by the ordinary standards of reasonable and honest people, and he realised that by those standards his conduct was dishonest. He could not import into the situation his own standard of honesty. The Tribunal therefore found the allegation, including the allegation that the Respondent had been dishonest, proved beyond reasonable doubt.

Allegation 4

26. This allegation related to a failure to record office account transactions relating to client matters on the office side of client ledgers. The Applicant had pointed out to the Tribunal that this state of affairs, which the Respondent admitted, had existed from the time his sole practice had been set up in 2000.

27. The Tribunal considered that the Respondent's admitted conduct in respect of this allegation, and his breaches of the Accounts Rules generally, had been the root cause of the confused situation in his accounts. The Tribunal found this allegation to have been proved.

Allegation 6

28. This allegation related to the Respondent having acted in a transaction where his own interest conflicted with those of his clients, one of whom was a member of his family. The Respondent had ignored the rules of conduct in respect of conflict because his own family was involved, and it was his view that he would never act in a way to their detriment. He had admitted this allegation as amended, and the Tribunal found it to have been proved.

Previous Disciplinary Sanctions before the Tribunal

29. None

Mitigation

30. The Respondent's representative referred the Tribunal to the case of Sharma where Judgment had been delivered in the Administration Court in May 2010. Paragraph 13 of the Judgment had referred to the fact that a finding of dishonesty would lead to a solicitor being struck off the Roll as the normal and necessary penalty in cases of dishonesty, save in exceptional circumstances. The Judgment referred to a small residual category where striking off will be a disproportionate sentence in all the circumstances. The Court had continued that in deciding whether or not a particular case fell into that category, relevant factors would include the nature, scope and extent of the dishonesty itself; "whether it was momentary, ... or over a lengthy period of time, ... whether it was a benefit to the solicitor .... and whether it had an adverse effect on others." The Respondent's representative submitted that this was such an exceptional case for the following reasons:

The delay in bringing the matter to trial which had been described by a previous Tribunal, in September 2010, as unacceptable and a breach of Article 6; the fact that the Respondent had worked for a considerable period since the Tribunal matter has commenced, again because of delay, and that he was already working to stringent conditions of approval under his practising certificate; that the offence committed had not been perpetrated for personal gain in the normal sense of that word; that there had been enormous personal pressures on the Respondent at the time the offence was committed that had led him to behave in an uncharacteristic way. The Respondent was deeply humiliated by his appearance before the Tribunal, had an unblemished practice record of 34 years, had now lost his good name and would be categorised as a solicitor who had behaved dishonestly. The Respondent accepted that client account was sacrosanct and that he had failed in his duty of stewardship. It was submitted that he had already suffered greatly because of the time he had had to live with the allegations. If the Respondent were allowed to continue in practice he would not trouble the Tribunal again. He apologised for having come here and damaged the good name of the profession.

Costs

31. Costs had been agreed between the parties at a total of £17,500. The Tribunal had no power to award compensation and the Applicant had therefore worked on the basis that any compensation relating to the issue of delay would be through the medium of a discount on costs. The amount of costs which included VAT and the costs of the Forensic Investigation had been agreed between the parties to reflect the issue of delay.

Sanction and Reasons

32. The Tribunal had listened carefully to the points made in mitigation and considered the whole question of penalty very carefully. It had to be guided by the law and previous cases. There was a heavy duty on solicitors to obey the Solicitors Accounts Rules (Re Weston). There were various passages in Bolton of particular relevance to this case. The Court had said that "it is required of solicitors practising in this country

that they should discharge their professional duties with integrity, probity and complete trustworthiness… The second purpose [of sanction] was the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth… It often happens that a solicitor appearing before the Tribunal could adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he had learnt his lesson and would not offend again… All these matters are relevant and should be considered. But none of them touches the essential issue, which was the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness… The reputation of the profession was more important than the fortunes of any individual member. Membership of a profession brought many benefits but that was part of the price." This was a tragic case for the Respondent but he had brought matters on himself as he had signally failed in his stewardship of clients' money. The money taken did not go into his pocket in the usual sense - but it went straight into his office account and assisted in the running of his practice. The Tribunal also bore in mind the first allegation where a considerable cash shortage was built up and not rectified for some time. The Tribunal did not find that this case fell in the "small residual category" of exceptions, described in paragraph 13 of the Judgment in Re Sharma. There had been delay, but these matters occurred over a period of time and the sum taken was considerable. There was no medical evidence produced as to the Respondent's state of mind at the time, and this was not a one-off happening. It went on over a considerable period of time. The good name of the profession was paramount and the Tribunal found that the Respondent by his dishonesty had tarnished that good name. In all the circumstances the Tribunal considered that the correct order was to strike off the Respondent and that was the Order which it made.

Order

33. The Tribunal Ordered that the Respondent, Terence Jeffrey Sopel, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,500.00.

Dated this 28th day of February 2011
On behalf of the Tribunal

D. J. Leverton
Chairman