

IN THE MATTER OF PAUL NICHOLAS SMITH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. J. N. Barnecutt (in the chair)  
Mr. D. J. Leverton  
Mrs N. Chavda

Date of Hearing: 24th September 2007

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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 Jayne Willetts, solicitor advocate of Hammonds, Rutland House, 148 Edmund Street, Birmingham, B3 2JR on 6th February 2006 that Paul Nicholas Smith of Downton, Salisbury, Wilts, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

At the opening of the hearing in the light of the medical evidence placed before the Tribunal Miss Willetts, the Applicant, sought to withdraw the allegations of dishonesty which she made against the Respondent.

The Tribunal consented to that course.

On 31st July 2007 the Applicant made a supplementary statement containing further allegations. The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that:-

1. He withdrew monies from client account (£85,284.33) between January and February 2006 other than as permitted by Rules 19 and/or 22 of the Solicitors Accounts Rules 1998.
2. He held client monies in accounts that were not client accounts other than as permitted by Rule 16 and contrary to Rule 1(c) of the Solicitors Accounts Rules 1998.
3. He utilised client funds (£34,084.33) for his own purposes between 30th January and 15th March 2006.
4. He was in breach of trust by acting without the authority of his co-trustee and by appropriating trust monies for his own purposes.
5. He allowed his client account to be overdrawn by £1,173.50 contrary to Rule 22(8) of the Solicitors Accounts Rules 1998.
6. He failed to remedy in full promptly on discovery the cash shortage on client account contrary to Rule 7 of the Solicitors Accounts Rules 1998.
7. He withdrew monies from client account (£33,383.49) between April 2005 and 30th November 2005 other than as permitted by Rules 19 and 22 of the Solicitors Accounts Rules 1998.
8. He utilised client funds (£33,383.49) for his own purposes between April 2005 and 30 November 2005.
9. He failed to comply with the directions of a Law Society adjudicator dated 23rd October 2006 and 4 December 2006 made pursuant to Schedule 1A of the Solicitors Act 1974.

In her supplementary statement the Applicant sought an Order that the directions of The Law Society's adjudicator dated 23rd October 2006 and 4 December 2006 be treated for the purposes of enforcement as if they were contained in an Order made by the High Court pursuant to paragraph 5 (2) of Schedule 1A of the Solicitors Act 1974.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2007 when Jayne Willetts appeared as the Applicant and the Respondent was represented by Richard Griffiths, solicitor of Richard Griffiths & Co of Salisbury.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal ORDERS that the respondent, PAUL NICHOLAS SMITH of Downton, Salisbury, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of September 2007 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 the Investigation Accountant of the Law Society.

AND the Tribunal directs that the Directions of the Law Society's Adjudicator dated 23<sup>rd</sup> October 2006 and 4<sup>th</sup> December 2006 be treated for the purposes of enforcement as if they were contained in an Order of the High Court.

**The facts are set out in paragraphs 1 to 29 hereunder:**

1. The Respondent, born in 1959 was admitted as a solicitor in 1987. At the date of the hearing he did not hold a current Practising Certificate. At the material time he practised as a sole principal as Smith & Co at Retreat House, 4 Water Lane, Totton, Southampton, SO40 3DP. Such practice ceased on 14th July 2006 when The Law Society intervened into his practice.
2. On 26th June 2006 a Forensic Investigation Officer of The Law Society (the FIO) began an inspection at the Respondent's practice. The FIO's report dated 5th July 2006 was before the Tribunal.
3. The Respondent was appointed co-trustee with Mrs L on 24 November 2005 of a trust established for the benefit of Mrs L's minor daughter, S. On 25th November 2005, £88,424.20 was paid into the client account of Smith & Co to be held on trust for S, until she reached the age of 25. S was 16 at the time.
4. Between January and March 2006 the Respondent withdrew a total of £85,284.33 from client account and paid the money into accounts in his name. He transferred £65,084.33 to a Barclays Tracker Account and £20,200.00 to a Halifax Web Saver Account. Neither account was a client account.
5. There was an undated attendance note on the file prepared by the Respondent recording that the trust money was no longer client money and that the co-trustee had confirmed this in writing. There was no evidence on the file that the co-trustee had given authority for the transfers of these funds.
6. In the 43 day period from 30th January 2006 to 15th March 2006 the Respondent withdrew from the Barclays Tracker Account in his own name monies totalling £34,084.33 for his own personal use.
7. On 31st March 2006 the Respondent paid into the Halifax account £10,000.00 from his own resources but was unable to explain how he had raised these funds.
8. Attached to the FIO's Report was a transcript of an interview conducted with the Respondent on 29 June 2006 in which the Respondent was recorded as saying,

"...I've a professional interest in (sic) comes to fruition in August and my fee for that will be about £30,000.00 and as a net result, I am aware that even without that I would have been able to eventually put that money back and my intention was again based on the spirit of the trust that ultimately there would be put back into the account as much or more of any reasonable interest that a prudent solicitor would get a return on in client funds or the equivalent of

client funds so on the basis of that that is what I did. I took a risk and I took a risk to myself. I didn't want to ask anyone else for funds and at any time I'm very well aware that I could have closed the situation".

9. Later in the interview the Respondent stated:-

"...As I say, I was not functioning very properly. I mean as trite as it sounds, I did it. It wasn't to take it. I obviously don't get cash out of client account. It wasn't that at all. I don't know is the answer. There were days when I was worrying because of my medical background with a dicky heart."

10. The FIO identified a cash shortage on client account of £1,173.50 which existed as at 31 May 2006 which was not rectified in full. The shortage was caused by client debit balances recorded on four client matters. The debit balances were caused by the transfer of costs from client to office bank account in excess of funds held for each of the clients concerned.
11. The shortage was partially rectified by a payment of £767.00 on 19th June 2006 but a shortage of £406.50 remained at the date of the FIO's inspection.
12. The Respondent's General Practitioner provided a report to The Law Society in which he concluded that the Respondent was suffering from extreme stress and had referred him for an urgent psychiatric assessment.
13. The Respondent had been instructed in April 2005 to act on behalf of Mrs T in the estate of Mrs S, her grandmother. The Will provided for the estate to be divided equally between Mrs T and her sister. It was subsequently agreed that Mrs T would receive all the assets in the estate. The Respondent was instructed by Mrs T to prepare a Deed of Variation and to place the monies due to Mrs T (£33,383.49) in his firm's client account pending further instructions from Mrs T.
14. The Deed of Variation was completed on 3 April 2005. The Executor sent £33,383.49 to the Respondent's client account on 27 April 2005.
15. In July 2006 there was an intervention into the Respondent's practice. By the date of the intervention the monies belonging to Mrs T were no longer in the Respondent's client account.
16. The relevant client ledger recorded 6 payments totalling £12,500 as follows:-

1 June 2005	Legatee Mrs K	3,000.00
1 June 2005	Exors of S	750.00
1 June 2005	Exors of S	1,250.00
7 June 2005	Mrs K	2,600.00
7 June 2005	Mrs K	2,500.00
9 June 2005	Mrs K	<u>2,400.00</u>
<b>Total</b>		<b><u>12,500.00</u></b>

17. Mrs K was Mrs T's sister (who had assigned her interest to Mrs T). Neither Mrs K nor Mrs S's executor had any interest in these monies. Mrs K and Mrs S's executor did not receive these monies.
18. The ledger also recorded that £20,883.49 (opening balance £33,383.49 less £12,500) were transferred from client account to office account during the period 27 April 2005 to 30 November 2005 so that as at 30 November 2005 there was a nil balance on the ledger. The transfers were made in connection with five invoices and a credit note. There were also a number of miscellaneous transfers from client to office accounts. The intervention Agent had not been able to locate copies of these invoices.
19. On 8 January 2007 the Respondent wrote to the Intervention Agent stating that Mrs T had asked him to keep the inheritance so that her husband did not become aware of it. He said the bills were raised for work carried out for Mrs T over the years and for which he had not billed her. He also said he paid £12,500 to either Mrs K or to the executors of the estate. He said that Mrs T was aware of what he was doing.
20. It was Mrs T's position that she did not authorise the Respondent to withdraw costs from client account; no agreement or discussion took place with the Respondent regarding costs; she had never authorised the transfer of any monies from client account to office account and that she had not authorised the payment of monies to Mrs K or to the executor of the estate.
21. On 23 October 2006 as a result of a complaint of inadequate professional service by a former client of the Respondent, Mr M, an Adjudicator of The Law Society directed the Respondent within 7 days:-
  - To pay £500.00 compensation to his former client, Mr M;
  - To limit his costs to £15,000.00 plus VAT and disbursements;
  - To provide Mr M within 14 days with an amended invoice and to refund all sums in excess of the total of the Adjudicator's direction.
22. The Respondent was notified of this direction by letter dated 14 November 2006.
23. On 4 December 2006 in order to clarify the amount payable the Adjudicator issued an addendum to his direction, namely that the Respondent was:-
  - To pay £500.00 compensation to Mr M;
  - To limit his costs to include Counsel's fees and disbursements (and VAT on each of those items as appropriate) to £15,000 plus VAT on the costs element calculated to be £344.11 producing an overall total of £15,344.11 and to refund Mr M all sums received in excess of that amount.
24. By letter dated 15 December 2006 The Law Society sent a copy of the Addendum to the Respondent.

25. In due course the Respondent made a proposal to comply with the direction by instalments. His offer was accepted by Mr M.
26. By fax to Mr M dated 6 April 2007 the Respondent said that he was having problems with his bank.
27. By letter dated 26 April 2007 the Respondent sent Mr M a cheque for £250.00. The Respondent's bank refused to honour the cheque.
28. The Respondent wrote to both Mr M and The Law Society on 25th May 2007 confirming that the cheque for £250.00 would be honoured on 29th May and that a further payment of £250.00 would be made in June.
29. At the date of the hearing the Respondent had paid £1,250.00 to Mr M so that a balance of £6,871.44 remained outstanding.

### **The Submissions of the Applicant**

30. The Respondent admitted the allegations. It was recognised in the light of the medical evidence that the Respondent was mentally unwell at the dates when the subject matter of the allegations took place. The use of the funds held in Trust for a minor represented a serious state of affairs. There remained an outstanding application to The Law Society's compensation fund in respect of these monies. It was accepted that all money had been repaid to Mrs T. Of the award made by a Law Society's adjudicator to Mr M, £6,871.44 remained outstanding.
31. The allegations against the Respondent were serious. He appeared to have undertaken erratic dealings with his client account and concern was expressed about the public interest.
32. The Applicant sought the costs of and incidental to the application and enquiry. The case had been somewhat unusual as the Respondent had generated some 800 pages of documents all of which had to be considered. The Applicant placed her costs at just over £22,000.00, including the costs of the FIO.

### **The Respondent's Mitigation**

33. From the medical evidence before the Tribunal it was clear that the Respondent had been mentally unwell. It was part and parcel of his illness that he had adopted some of the approaches that he had.
34. The Tribunal was invited to consider the statements of persons supporting the Respondent all of whom spoke highly of the Respondent's decency, competence, integrity, probity and trustworthiness.
35. The Respondent had suffered mental ill health over a long period of time and it had been managed. The particular incidents before the Tribunal represented "flare ups" of his condition. The Respondent had lost persons who gave great support to him, namely his father, who had died, and his consultant, who had retired.

36. In all of the particular circumstances of this case it was hoped that the Tribunal would feel able to impose an Order that enabled the Respondent to continue to practise as a solicitor, albeit in supervised employment and subject to other restrictions on his Practising Certificate.
37. The Respondent was highly thought of by those whom he represented.
38. The Respondent and his family had suffered to a great degree. The case was really that the Respondent found himself appearing before the Tribunal only because he was mentally unwell. The Law Society's costs would have been substantially lower if it had not been for the approach adopted by the Respondent when he was not mentally functioning as he should have done.

### **The Findings of the Tribunal**

39. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The subject matter of the allegations represented a very serious state of affairs. On two separate occasions the Respondent had in effect taken clients' money for his own use. If it were possible that was even more serious in the case of the money that he was holding as trustee for a child.
40. The Tribunal has had placed before it evidence as to the state of the Respondent's mental health. It accepts that evidence and finds that at the material time the Respondent was seriously unwell mentally.
41. Whilst the Tribunal has some sympathy for the position in which the Respondent has found himself, the Tribunal must bear in mind its first duty to protect the public and its second duty to protect the good name of the solicitors' profession and the public's perception of that profession. Those considerations had to be given precedence even though it might be hard on an individual. The Tribunal considered that it would be both appropriate and proportionate and to impose upon the Respondent an Order that he be suspended from practice indefinitely.
42. The Tribunal also Ordered the Respondent to pay the costs of and incidental to the application and enquiry. The Tribunal noted that the Respondent did not agree the costs. He considered that The Law Society might not have incurred such a high level of costs had his mental ill health been taken into account. The Tribunal considered that such arguments were more appropriately to be considered by a costs judge and Ordered that the Applicant's costs, to include the costs of the FIO, should be subject to a detailed assessment unless agreed between the parties.
43. It was right that Mr M should be able to enforce the direction made by the adjudicator of The Law Society and accordingly the Tribunal directed that the adjudicator's directions should be treated for the purposes of enforcement as if they were Orders of the High Court.
44. The Respondent would be aware that the determination of the indefinite period of suspension is a matter for the Tribunal and he would have to make an application to the Tribunal in that respect. Whilst the Tribunal does not seek to bind any future division of the Tribunal it hoped it would be helpful to point out to the Respondent

that any future division of the Tribunal considering such application would require to be satisfied by the production of evidence that the Respondent had recovered his mental health and was in every other way fit to practise as a solicitor. The Tribunal noted that during the course of the hearing submissions had been made about conditions that might be placed upon the Respondent's ability to practise as a solicitor. The Tribunal felt again that it would be helpful to mention that it considered it likely that should the Respondent be permitted to practise again in the future he would be likely to be subject to stringent conditions.

Dated this 15<sup>th</sup> day of November 2007

On behalf of the Tribunal

J N Barnecutt  
Chairman