

IN THE MATTER OF PAUL THOMAS DANIELS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mr J N Barnecutt
Mrs C Pickering

Date of Hearing: 30th October 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 Robert Simon Roscoe, a solicitor and partner in Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London, W1U 2PQ on 7th January 2008 that Paul Thomas Daniels of Garrards, solicitors of Swinson Chambers, 3a The Square, Shrewsbury, Shropshire, SY1 1LA, 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.

The allegations were:

1. That he had withdrawn client money from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 and that in doing so his conduct had been dishonest.
2. That he had allowed client money to remain in his office account in breach of Rule 15 of the Solicitors Accounts Rules 1998 and that in doing so his conduct had been dishonest.
3. That he had failed to act in the best interests of his clients by failing to ensure that payments of stamp duty and the registration of property and mortgage interests occurred promptly following completion in conveyancing matters in breach of Rules

1 and 6 of the Solicitors Practice Rules 1990 and Rules 1 and 3 of the Solicitors Code of Conduct 2007.

4. That he had failed to remedy promptly and upon discovery client account deficits in breach of Rule 7 of the Solicitors Accounts Rules 1998.
5. That he had failed to keep accounting records in breach of Rule 32 of the Solicitors Accounts Rules 1998.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 30th October 2008 when Robert Simon Roscoe appeared as the Applicant and the Respondent was represented by Richard Nelson of Richard Nelson, solicitors.

The evidence before the Tribunal included the admissions of the Respondent to allegations 2-5 save that he denied that he had been dishonest. The Respondent denied the first allegation in its entirety. A Report, dated 8th August 2007 ("the Report") drafted by Miss J Hartley, a Senior Investigation Officer, was also before the Tribunal, as were a statement by the Respondent, a psychiatric report dated 20th October 2008 and various references. The Tribunal also had the benefit of the oral evidence of the Respondent.

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

The Tribunal Orders that the Respondent, Paul Thomas Daniels of Garrards Swinson Chambers, 3a The Square, Shrewsbury, Shropshire, SY1 1LA, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1-11 hereunder:

1. The Respondent, born in 1964, was admitted as a solicitor in 1990. His name remained on the Roll of Solicitors. The Respondent practised on his own account under the style of Garrards Solicitors ("the firm") of Swinson Chambers, 3a The Square, Shrewsbury, Shropshire, SY1 1LA.
2. On 14th June 2007 Miss J Hartley, a Senior Investigation Officer with the Solicitors Regulation Authority, attended the Respondent's practice to inspect the books of account and other documents. The Report dated 8th August 2007 set out her findings. The Respondent's books of account did not comply with the Solicitors Accounts Rules and his accounting records had not been properly maintained.
3. Miss Hartley noted that between July 2006 and April 2007 the Respondent had on 39 occasions transferred clients' money from his client bank account to his office bank account. The purpose of these transfers appeared to be to pay Inland Revenue stamp duty due on completed conveyancing purchases. Such transfers would have been within the Rules had they represented reimbursements of stamp duty fees previously paid out of office account by the Respondent on his client's behalf. However, none of the 39 transfers represented a reimbursement.

4. Moreover, with regard to the 39 transfers (full details of which were provided to the Tribunal) Miss Hartley noted in her Report that the transferred sums remained in the Respondent's office account for lengthy periods. Three of the 39 sums transferred remained in the Respondent's office account for less than 21 days but the rest remained in his office account in excess of 50 days (13 sums remained for more than 100 days and 13 for more than 200 days).
5. Further Miss Hartley noted that during the period July 2006 - April 2007 the Respondent had paid the Inland Revenue 28 of the transferred sums but also that the Respondent had incurred late penalty charges on 20 of the 28 delayed stamp duty payments. Those penalty charges, paid by the Respondent, totalled £5,666. The Report identified the relevant files and amounts.
6. In respect of these 28 delayed payments, the Respondent had paid 21 by debit card payment using the Inland Revenue's on-line facility and only seven by way of cheque. During the same period the Respondent had made 15 payments of stamp duty directly from client account by cheques that took between five and nine days to clear. When asked by Ms Hartley why some payments of stamp duty had been made through office account, the Respondent said that it was a mistake.
7. Miss Hartley noted that in respect of 11 stamp duty payments where money had previously been transferred from his client bank account to his office bank account, the Respondent had not made payment to the Inland Revenue. As at 31st May 2007 the client monies held in the Respondent's office bank account (comprising the money due to be paid on 11 stamp duty matters and a single separate matter in respect of CB) totalled £86,120. Miss Hartley noted that the Respondent's office account was over-drawn and that, accordingly, in respect of those 12 client matters alone, there was a minimum cash shortage of £86,120.
8. Between January 2006 and July 2007 the Respondent had transferred into his office account client monies totalling £183,000.39, ostensibly (save in the matter of CB) to pay stamp duty. During the same period the Respondent had paid out to the Inland Revenue in stamp duty a total of £96,919, excluding the penalty charges of £5,666.
9. During the period January 2006 to July 2007 by extrapolation from the figures in the Report there appeared to be a continuing benefit to the balance of the Respondent's office account. During the same period the Respondent's overdraft facility was £15,000, increased in August 2006 to £25,000. The Report detailed the end of month overdrawn balances on the Respondent's office account from April 2006 to July 2007.
10. There was a failure to maintain accounting records in breach of Rule 32 of the Solicitors Accounts Rules in that the Respondent's books of account were not properly maintained. In addition various payments and receipts had not been posted and balances in respect of a number of client ledger accounts were inaccurate. Moreover reconciliations had not been carried out.
11. The failure of the Respondent to pay stamp duty promptly delayed registration with HM Land Registry of both the purchaser clients' title to the property and the lender clients' interest.

The Submissions of the Applicant

12. The Applicant informed the Tribunal that all the documents before it were agreed as, in general, were the facts. The Respondent denied both aspects of allegation 1 and although he admitted allegation 2 he denied dishonesty. The Respondent also admitted allegations 3-5. The Applicant stated that it was for him to prove dishonesty beyond reasonable doubt. The Applicant outlined the facts and referred to the relevant parts of the Report. He referred to the 39 transfers and stressed that his case was that these sums did not represent reimbursements of payments made or made shortly after the transfer. He stressed that the Respondent could have made the payment for stamp duty directly from client account with no need for transfers from client to office account. The Applicant referred the Tribunal to the schedules in the Report and clarified that any payments by debit card were also from office account. The schedule at Appendix 1 set out 28 client to office account transfers in respect of stamp duty showing the benefit of client monies by amount and duration. These were in respect of matters where stamp duty had been paid. The Applicant took the Tribunal through a number of the transactions indicating the client, completion date, amount of stamp duty, date of transfer of money from client to office account, date office cheque raised, cheque number, (if the cheque had been traced), date cheque cleared or payment made by debit card, number of days during which the office account had the benefit of client money, the amount of stamp duty finally paid, including any penalty, and the eventual method of payment. The schedule at Appendix 2 provided details of the 11 cases where transfers had been made from client to office account in respect of stamp duty that had not been paid as at 31st May 2007. Including the matter of CB (£9,000) the schedule showed a sum of £86,120 of client money in office account. For example, in the matter of H, a sum of £1,810 had been in office account for 307 days. The Tribunal were also referred to the schedule at Appendix 3 that provided details of 15 payments of stamp duty directly from client account by cheque during the relevant period (July 2005 - June 2007) that took only between 5 and 9 days to clear. The Applicant said that when interviewed by Miss Hartley at a meeting on 31st July 2007, the Respondent had agreed that monies received from clients for the payment of stamp duty were clients' monies and should be paid into and held in client account pending payment to the Revenue. In each instance where payment had been made from office account the Respondent said it had been a mistake.
13. The Applicant stressed that as at 31st May 2007 a sum of at least £86,120 of client monies was held in the office account that was in overdraft giving a minimum cash shortage of £86,120. This, the Applicant submitted, was a clear breach of Rule 7 of the Solicitors Accounts Rules.
14. Referring to the schedules, the Applicant submitted that the transfers of monies from client account to office account, ostensibly in respect of payments of stamp duty from office account, provided a continuing benefit to the Respondent. He further submitted that the odd mistake was not the explanation but a systematic way in which the Respondent sought to keep his practice afloat by remaining within his overdraft limits by knowingly using clients' monies. The fact that the firm's accounts were not up-to-date enabled the Respondent to continue acting in a dishonest way. The Applicant stressed that the Respondent had not been able to repay £77,000 of the minimum cash shortage by 31st July 2007.

15. Referring to the penalties incurred by the Respondent of some £5,666, the Applicant submitted that there was no evidence of any correspondence between the Inland Revenue and the Respondent challenging the imposition of any of the penalties. If the Respondent had had real concerns about excessive delays when making payment by office cheques, the Applicant submitted that he would have raised these concerns.
16. The Applicant explained to the Tribunal that he had considered the Respondent's statement dated 23rd October 2008 and noted the issues raised about the Respondent's personal difficulties and health problems during 2005 and subsequently. However, he noted that these matters had not been mentioned to Miss Hartley in July 2007. He accepted that "pressures of work and difficulties in his domestic circumstances" were referred to in the letter dated 17th September 2007 and written on the Respondent's behalf by Richard Nelson.
17. Turning to allegation 1, the Applicant submitted that the detailed evidence before the Tribunal showed that the transfers from client account to office account were in breach of Rule 22 of the Solicitors Accounts Rules 1998 in that they had not been properly required as either a full or as a partial reimbursement. The Applicant referred to the law in respect of dishonesty drawing the Tribunal's attention to the relevant cases of Twinsectra Ltd v Yardley and Others [2002] UKHL 12, Bryant and Bench v The Law Society [2007] EWHC 3043 Bultitude -v- The Law Society [2004] EWCA Civ 1853. He submitted that the objective test was satisfied in that using clients' money to ensure that the firm's office account did not exceed its overdraft limit was dishonest by the standards of ordinary and reasonable people. It was for the Tribunal to determine from all the evidence before it whether both the objective and the subjective tests were satisfied and whether the Respondent was aware that by those standards he was acting dishonestly.

The Submissions on behalf of the Respondent

18. Mr Nelson, on behalf of the Respondent, submitted that it was both a difficult and an unusual case. He stressed that while the Respondent accepted the evidence before the Tribunal, Mr Daniels believed that he had not been dishonest but that he had not had sufficient control of the books of account in his firm and consequently had made mistakes. Mr Nelson explained that the Respondent had experienced personal difficulties outside his practice and consequently had found it difficult to keep up with the administration of the practice as well as his workload and marketing. It had not been the Respondent's intention to shore up his office account. He had made mistakes because he was not on top of the day to day administration and had often used the wrong cheque book. The cheque books were identical. The Respondent had intended to write the cheque on the appropriate account not noticing that the cheque had failed to clear. Mr Nelson referred to the representations on behalf of the Respondent in response to the Forensic Investigation Report. These were before the Tribunal. The matter of CB had been explained in that it had arisen as a result of a wrong identification by the Respondent during the investigation. The representations had not referred to the Respondent's depression or the stress caused by personal family circumstances because at that time they had not appeared relevant to the Respondent's problems with his practice. However, the Respondent had consulted his General Practitioner in March 2006 when his wife had noted that he was suffering from stress. All the General Practitioner records were considered by Dr Walker when he compiled

the psychiatric report dated 20th October 2008. That was before the Tribunal. Mr Nelson referred to the incident on 31st July 2008 when the Respondent was due to attend before the Tribunal and had stepped in front of a heavy goods vehicle outside Euston station. As a result of his informal admission to a psychiatric hospital, Dr Walker had been able to express his opinion that the Respondent had been suffering from a depressive episode in 2006. Mr Nelson stressed that the consideration of character was an element in the test of dishonesty. He referred to the various references before the Tribunal referring to the Respondent's integrity, reliability and honesty. Mr Nelson submitted that the Respondent was not a man who would dishonestly manipulate his own practice. He referred to acknowledged delays at the stamp office in late 2006. He said that the Respondent had been pre-occupied and that he had believed that his office account overdraft reflected the true position. He had complained to the DX and had not been aware, until January 2007, that cheques had not been clearing. The Respondent had made the direct payments by debit card from his office account when he received complaints from lenders. Mr Nelson explained that the Respondent's practice was continuing and making a very modest profit. Moreover, the Respondent had made good the shortfall on client account. The Respondent's wife had not known about the Report nor of the hearing on 31st July 2008. Mr Nelson stressed that his firm depended upon the Respondent being able to continue to practice and that his failure to reconcile his accounts with its consequential problems had occurred during a period when the Respondent was medically ill, under extreme stress and unaware that cheques had not cleared and used a manual accounts system and handwrote cheques. He could offer no explanation for the cheques listed as "Not Found" on the schedules. No photocopies were kept of those cheques, nor were the cheque stubs completed. When the relevant forms relating to the payment of stamp duty failed to arrive, the Respondent did not notice. No problems, other than penalties for late payment, had arisen as a result of the breaches of the Rules, although priority periods were not protected. There were batches of cheques when the Respondent used the wrong chequebook and made transfers. However the Respondent was unable to explain why he kept making that particular mistake. The Respondent had only questioned the first one or two penalties for late payment. Mr Nelson agreed that on the basis of the evidence it appeared that some 25% of conveyancing transactions were affected. However he pointed out that the Respondent had also been dealing with personal injury work. Mr Nelson agreed that an office overdraft of some £100,000 was an extreme financial situation. However he stressed that the Respondent had been relying on paper statements and had not been aware of the true extent of the overdraft position.

The evidence of the Respondent

19. The Respondent elected to give evidence on oath. Responding to questions from the Tribunal, he explained that he agreed that delay problems with some 25% of his conveyancing transactions was unusual. However he said that although on some occasions he did chase the Revenue, in general he had not been giving the process sufficient thought. He had not been chased by lenders very much and must have realised on a piecemeal basis when he did not have clearance certificates.
20. In cross-examination, he explained that for the financial year April 2005 to March 2006 he had had to get an extension of time and submitted a qualified report in December 2006.

21. In responding to further questions from the Tribunal as to the details of his processes, the Respondent said that he completed the form and wrote the cheque in error on the office account when the money for the stamp duty was in client account. While there was a photocopy of the form on the client file, there was no copy of the cheque. The Respondent said that he was unsure as to how he had realised what he had done. However when he realised he had transferred the money from client account to office account to ensure that the office cheque was honoured. However, in some cases he paid by debit card. He was not sure if the penalty notices came after the debit card payments or before. He had tried to argue by telephone a couple of times but the Stamp Duty office was unhelpful. The Respondent said that he was not dealing with the administration properly. Often he would get pro-forma notes from lenders seeking information about the current position. If he realised that things had not happened, sometimes he followed it up. The Respondent did not think that he checked as to whether or not the cheques had been cashed. However, he did check if he was going to pay by debit card but did not know how he was able to check if he did not know the cheque number. The Respondent said that he could not remember how, given the process he followed, he knew when payments of stamp duty had not been made, or when he had written an office cheque. He referred to some 49 other occasions when he had used the wrong account to make payments. The list of these payments was before the Tribunal as an exhibit to the Respondent's statement.

The Findings of the Tribunal

22. Having considered all of the evidence before it, the Tribunal found all of the allegations proved. With regard to the question of dishonesty, the Tribunal found that the actions of the Respondent were dishonest having applied the tests in *Twinsectra*. The Tribunal found that in transferring clients' money from his client bank account to his office bank account, ostensibly to pay Inland Revenue stamp duty due on completed conveyancing purchases, the Respondent had been seeking to maintain his office account within agreed overdraft limits while incurring periodic cash shortages on client account. Further, the Tribunal found that the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence and heard his explanations for the use of office cheques and the late payments of stamp duty, the Tribunal was satisfied, so that it was sure, that the Respondent was fully aware of what he was doing and did not have an honest belief that what he was doing was appropriate in the circumstances. The Tribunal was satisfied therefore that the Respondent was aware that what he was doing was dishonest by those same standards.

The Tribunal's decision and its reasons

23. The Tribunal found all of the allegations had been substantiated. Further, the Tribunal made a finding that, in acting as he did, the Respondent had behaved dishonestly.
24. The Tribunal took into account the Respondent's explanations, admissions, mitigating circumstances and testimonials. The Tribunal also had regard to the medical evidence and to the submissions of Mr Nelson and to the previous cases referred to them. The Tribunal also noted that the Respondent had suffered greatly as a result of his actions.

However, the Tribunal was not able to ignore the fact that the Respondent had misused clients' monies in circumstances that the Tribunal found were dishonest.

25. Solicitors have particular and onerous duties with regard to monies entrusted to them and must expect the most serious view to be taken if they fail to adhere to the highest standards of probity.
26. The Tribunal Ordered that the Respondent, Paul Thomas Daniels of Garrards Swinson Chambers, 3a The Square, Shrewsbury, Shropshire, SY1 1LA, 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 23rd day of February 2009
On behalf of the Tribunal

Miss L Lucking
Chairman