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IN THE MATTER OF GREGOR ROLAND AYERS HUNTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr R Nicholas
Mrs V Murray-Chandra

Date of Hearing: 7th August 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Katrina Wingfield, solicitor and partner in the firm of Penningtons LLP, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE ON 23rd August 2006 that Gregor Roland Ayers Hunter of 116 Hamlet Court Road, Westcliff-on-Sea, Essex, SSO 7LP, solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to amend the allegations contained in the Rule 4 Statement, the Respondent agreed and the Tribunal consented thereto. The allegations set out below are in the agreed amended form.

The allegations were that the Respondent had been in breach of Rules of Practice namely that he:

(a) permitted an unadmitted member of staff to authorise withdrawals from client account without specific authority signed by himself in breach of Rule 23 of the Solicitors Accounts Rules;

(b) acted in breach of Practice Rule 15 in that he failed to send client care letters to clients detailing the firm's costs and terms and conditions;

(c) acted in breach of Practice Rule 1(c) in that he made a secret profit:

(i) by creating "dummy bills of costs" relating to residual balances in client account;

(ii) by charging clients an additional sum of £20 on top of the amount actually paid by way of a disbursement in respect of local search fees;

(iii) by charging clients as a disbursement in the sum of £30 (no VAT added) in respect of telegraphic transfer fees.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 7th August 2007 when Katrina Elizabeth Wingfield appeared as the Applicant and the Respondent was represented by Robert F Ashton of Hacking Ashton LLP, Solicitors.

The evidence before the Tribunal included the admissions of the Respondent both as to the facts and the allegations.

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

The Tribunal Orders that the Respondent Gregor Roland Ayers Hunter of 116 Hamlet Road, Westcliff-on-Sea, Essex, SS0 7LP, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,500.00 inclusive.

The facts are set out in paragraphs 1 - 20 hereunder:

1. The Respondent, aged 61, was admitted as a solicitor in 1969. He practised as a sole principal under the style of Hunter Solicitors at 116 Hamlet Court Road, Westcliffe-on-Sea, Essex.

2. A Senior Investigation Officer of The Law Society ("the SIO") began an inspection of the Respondent's books of account on 3rd August 2005. The SIO's Report dated 15th September 2005 was before the Tribunal. The Report set out the undernoted matters of concern.

<u>Solicitors Accounts Rules (Rule 23)</u>

3. Mrs B, who worked as a part-time unadmitted assistant, was authorised to operate bank accounts including the client account of the Respondent's firm alone. She had in fact arranged withdrawals by signing client account cheques without the Respondent's specific authority in respect of each withdrawal. The Respondent confirmed to the SIO that he was the usual signtory on client account cheques but Mrs B in whom he had absolute trust, gave cover for holidays and on other occasions when he was absent from the office.

Practice Rule 15

4. The Respondent told the SIO that it was not his usual practice to provide his clients with a client care and costs information letter at the outset of the matter because he was a sole practitioner in a small firm who had a highly personal solicitor/client relationship, most of his work was repeat business and he felt a lesser need to issue client care letters than might have been the case for a firm with large turnover of clients. In residential conveyancing matters the Respondent would send a new client a quote in writing if this was requested. Quotes were sometimes sent to existing clients. The Respondent began to send "client care" letters as soon as he had discussed this matter with the SIO.

Dummy bills

6. The SIO considered a number of bills of costs headed "Dummy Bill" in the Respondent's bills of costs file. Three of these bills were dated 3rd November 2003, two 13th September 2004, one 15th September 2004 and three 15th November 2004. Funds in respect of those bills had been transferred from client to office account on 3rd November 2003, 17th September 2004 and 12th November 2004. The smallest sum was £10, the largest £115.

7. The Respondent confirmed to the SIO that these dummy bills had not been delivered to the clients, adding that often such bills could not be delivered as the residual balances often came to light months or years after completion of the client matter when it might be difficult to trace the client concerned.

8. The dummy bills contained the narrative, "post completion work" or, "additional work". The Respondent said that there was always additional work on every case.

9. When asked whether he had established why there were residual balances on the relevant client ledgers prior to the transfers being made the Respondent indicated that his bookkeeper might have done so but he could not say without looking into the individual matters. He did not know what the residual balances represented.

10. The Respondent had directed that the bills be raised.

11. The SIO exemplified the matters of Miss F and Mr and Mrs R.

12. In relation to Miss F the residual balance was £60 and appeared to represent the difference between the Land Registry fee on the completion statement (£100) and the Land Registry fee actually paid (£40).

13. In relation to Mr and Mrs R the residual balance was £50 and that appeared to be the difference between the Land Registry fee of £200 on the completion statement and the Land Registry fee actually paid of £150.

14. In relation to Mr and Mrs R the Respondent confirmed that the difference of £20 between the amount of the local search fee on the completion statement, £100, and the

amount of the local search fee actually paid, £80, had been transferred from client to office bank account at about the time of completion.

15. There was also the matter of Mr W where the charge in the dummy was £115, and there had been a residual balance of that sum. In that case the local search fee in the completion statement was £135 but the ledger demonstrated that no local search fee had been paid.

16. The Respondent explained that when the exact amount of the Land Registry fee was not known at the time of completion he included in the completion statement a sufficient amount to ensure he was covered. The Respondent accepted that any overpayment of the actual Land Registry fee should have been returned to the client.

PSG - Local search fees

17. For three or four years the Respondent had used the Property Search Group (PSG) to conduct local searches. A local search carried out by the local authority would cost £115. The same search carried out by PSG cost £95. PSG had informed the Respondent that to take the difference of £20 as a "commission" was acceptable to The Law Society and that was what he had done.

18. The Respondent had not checked direct with The Law Society whether this was acceptable. The Respondent's reporting accountant had informed him that it was not appropriate to make the additional £20 charge in March 2005.

Telegraphic Transfer Fees

19. Until March 2005 the Respondent had charged his clients £30 (no VAT) as a disbursement for a Telegraphic Transfer ("TT"). His bank charged a monthly fee for effecting TT's and the proportion attributable to each client depended on the number of TT's made. The Respondent had accepted that a standard charge for a TT was not a disbursement, but a charge for effecting the same. This had been drawn to the attention of the Respondent by his reporting accountant and he had changed his practice to that of charging a fee of £30 plus VAT for effecting the TT.

20. The Respondent's reporting accountant had qualified his Accountant's Report for the year ended 30th September 2004 because the amounts of "search fees" and "bank transfer costs" charged to the clients "usually exceed actual cost incurred and this is not explained to the client" and because "internal fee notes" were raised in order "to clear small balances left on client account subsequent to completion of the transaction which were not delivered to the clients concerned.

The Submissions of the Applicant

21. The Respondent admitted the facts and the allegations. The Law Society had a responsibility to ensure the protection of the public and clients and therefore to stamp out bad practice where clients were potentially being misled.

22. It was not acceptable to suggest that a mixture of failing to keep up to date with modern practice and a genuine misunderstanding with regard to the Rules for disbursements minimised the Respondent’s breaches. With regard to the submission that The Law Society’s response to the Respondent’s breaches was "entirely inappropriate and out of proportion" was a matter for the Tribunal to decide.

23. Whilst the background to the PSG matters might be of some interest and of some value in so far as sanction was concerned, it was submitted that as the Respondent was unaware of that background at the time he committed to the process he could not suggest that the historical background influenced him in any way into adopting the practice. He relied solely upon an assurance from a former client (of PSG) that the procedure was acceptable to The Law Society. He did not check the position with The Law Society. It appeared that the Respondent entered into the arrangement with PSG after the publication in The Law Society Gazette of the joint statement in February 2001 and the subsequent article in March 2001, wherein the particular process which involved charging a client more for a disbursement than the true cost was criticised.

24. Whilst it was accepted that there was no obligation in conduct to read The Law Society Gazette, it was suggested that to do so was a matter of good practice, particularly for a sole practitioner.

25. It appeared that the Respondent, on the contrary, took pride in being "of the old school" and acknowledged failures to keep up to date.

26. It was submitted that the resolution of small ledger balances was, as a matter of custom and practice, dealt with by the raising of dummy bills. It was submitted that the client account balances were exactly that, client account balances, and the Respondent should have known that to raise dummy bills rather than trace the owner of those client monies was indeed wrong. The size of the residual balance was immaterial.

27. It was a matter of concern that the Respondent saw these sums as trivial and his practice as "old fashioned, out of date, ignorant or foolish" but no worse.

28. So far as TT fees were concerned, it was submitted that it was inappropriate to suggest that a client had not suffered any loss when he paid more by way of a disbursement than the amount charged by the bank. Whether this practice had been adopted by many other solicitors was not relevant.

29. It was of particular concern in the circumstances of this case that clients were not being provided with client care letters pursuant to Practice Rule 15 and were not therefore being given relevant costs information. Regardless of the nature of the Respondent's practice, he was bound by the Rules of professional conduct. The Code only provided for information regarding costs but also information regarding the responsibility for client matters and the complaints procedure.

30. The Solicitors Accounts Rule breach were in place for an important reason, namely to protect client funds. That is the basis for the requirement that only properly qualified persons can authorise movement of funds held on behalf of clients.

31. The Respondent's case was that he was a person of great personal integrity and that his principal offence was that he was of "the old school" and failed to keep up to date with current practice. Members of the profession, particularly those working in wholly unsupported surroundings have an even greater responsibility to ensure they are up to date. The Solicitors Regulation Authority was committed to ensuring that clients were not misled in any way and that the reputation of the profession was not damaged. The Tribunal was invited not to take the view that the matters before it were trivial.

The Submissions of the Respondent

32. The Respondent admitted the allegations. The Respondent was of exemplary good character and he was a competent and reliable solicitor. The Tribunal was invited to give due weight to the large bundle of excellent testimonials written in the Respondent's support and, indeed, further testimonials in the same vein were handed up at the hearing.

33. In particular the Tribunal was invited to take into account the Respondent's own reporting accountant who had notified The Law Society of the Respondent's breaches in his annual Accountant's Report although he, himself, had considered such breaches to be trivial and did not consider that they necessitated the implementation of the disciplinary process.

As soon as the Respondent's breaches were pointed out to him he put matters right and at the date of the hearing continued to comply with all of the Rules relating to practice as a solicitor. For example when the Respondent was away a qualified assistant solicitor signed cheques on client account should that be necessary.

34. The Respondent now had in place a much tighter procedure to ensure that files were not closed should there be any residual balance remaining on the relevant client ledger.

35. The Respondent had been a solicitor for nearly forty years. His personal integrity and honesty were unimpeachable. The Respondent had been proud to be a member of the solicitors' profession and had always sought to serve his clients and his profession to the best of his ability. He was a past president of his local law society. The Respondent was both embarrassed and mortified to be appearing to answer allegations before his professional disciplinary tribunal.

36. It was submitted that the Respondent's main offence had been that he was of the "old school" and he had not kept fully up to date with current practices. The Respondent had put right everything which had been drawn to his attention. The Respondent had been granted a practising certificate by The Law Society that was not qualified in any way.

37. The matters before the Tribunal had been hanging over the Respondent's head for some two years. He had been caused pain and distress by this. The original complaint had included allegations that the Respondent had been dishonest and/or reckless and that he had been guilty of conduct unbefitting a solicitor. By the time the hearing before the Tribunal took place those very serious allegations had been withdrawn.

38. The breaches with which the Tribunal was invited to deal were of a much less serious nature than those that originally had been put forward. The Tribunal was invited to take the view that had the allegations at an early stage matched those to be considered by the Tribunal, it was more likely than not that The Law Society would have dealt with the Respondent by way of an internal sanction. There had been no complaint by nor any loss to any client.

39. The Respondent had acknowledged that by authorising Mrs B to sign client account cheques, he was in breach of Rule 23 of the Solicitors Accounts Rules. He had seen the arrangement as being in the best interests of his clients and ensured that clients were served properly if, for instance, the Respondent had been away on holiday. The Respondent had absolute trust in Mrs B who held a law degree and had also passed the Legal Practice Course but had not gained a professional qualification. Other proper arrangements had now been made.

Client care letters

40. With regard to the Respondent's failure to send client care letters amounting to a breach of Rule 15, the Respondent did not generally deliver "Rule 15" client care letters to his clients. He did not think it was necessary for him to do so having regard to the personal nature of his practice. He was a sole practitioner and many of the people he acted for were repeat clients or personal friends. No complaint had been made by any client.

41. As soon as the Respondent was informed of the strict requirements of Rule 15 he produced a client care letter which he sent assiduously to all his clients.

42. While it was accepted that the Respondent was not in the habit of sending Rule 15 letters to his clients, that was not itself a requirement of the Rule. It was described as "good practice". The main object of the Code was to make sure clients were given the information they needed. This was not a serious breach under Principle 13.01 and 02 and did not suggest that a failure to comply with the Code would amount to a breach of Practice Rule 1. There should not be a finding of conduct unbefitting in a breach of Practice Rule 1 in connection with this allegation.

Dummy bills

43. With regard to the preparation of "dummy bills" during his service of articles and at the firms with which he worked since, it had been the Respondent's experience that this was how small ledger balances that remained after completion of a matter were dealt with. Until recently it was common practice in a large number of firms. The Respondent accepted it as custom and practice which he continued when he set up his

own firm. He did not know that it was wrong until he was informed of that by his accountant.

44. To put this in context, in the billing year in question of 259 bills delivered, nine were dummy bills, totalling £455 or 0.29% of total billings for the year. 99.71% of bills were correctly delivered and paid. This, it was suggested, was truly "de minimis". The Respondent dealt with the matters entirely openly. Each bill was marked as "dummy" and often printed on a different coloured paper. The practice ceased immediately the Respondent was informed that this was wrong.

45. The Tribunal was invited not to make a finding of unbefitting conduct or of a breach of Practice Rule 1 in this connection.

PSG search fees

46. PSG was a publicly quoted company and was the largest organisation carrying out personal local and other searches on behalf of solicitors with expedition that many solicitors saw as having considerable benefits for their clients. It was reported that the services of PSG are used by 40% of the members of the profession.

47. PSG wished to be able to pay solicitors a commission. As the commission would be less than £20 it was thought that this would come within the exception to Rule 10. In January 2000 solicitors acting for PSG wrote to The Law Society enquiring whether the arrangements came within the Rules. The Law Society's reply after a telephone conversation of 18th January 2000 specifically approved the arrangements PSG were proposing.

48. Some twelve months later The Law Society had second thoughts about the advice previously given and it wrote again to the solicitors acting for PSG drawing the attention of the solicitors to a recent decision of the Compliance and Supervision Committee in which a firm of solicitors had been severely reprimanded when it sought a local search agency fee which was £20 in excess of the actual fee. The Committee also disapproved of the practice where the solicitor paid the agency the full fee and a refund of £20 was made to the solicitor "disguised" as commission. The committee took the view that this practice was in breach of Practice Rule 1.

49. The solicitors acting for PSG told the Law Society on 19th February 2001 that PSG had notified its whole network that only one price should be quoted to a solicitor and that if a solicitor wanted to receive any commission then that must be taken out of the price originally quoted. The Law Society did not respond to that letter. It appeared that that advice might not have been passed on by PSG to its operators and was not followed in every case, as in a number of instances, including that of the Respondent, the net amount continued to be paid with the solicitor retaining the balance as a "commission".

50. The letter from The Law Society of 25th January 2001 referred to the decision of the Compliance and Supervision Committee in relation to the firm of X which had been investigated by The Law Society in relation to its receipt of "commissions" in relation to the payment of local search fees. Those arrangements, which were the same as Mr

Hunter had with PSG, comprised the client being charged the sum of £20 more than the actual amount paid for the local search, the balance being retained by the solicitor as a "commission". As stated in the letter from the Society of 25th January 2001, the Compliance and Supervision Committee had taken the view that this represented a secret profit and could be misleading to the clients, as a result of which the partners in the firm of X were issued with a severe reprimand.

51. Based on the decision in the case of X in which such a "commission" was held by the Compliance & Supervision Committee to be a "secret profit" on 1st February 2001 The Law Society placed a notice in the Gazette under the heading "Misleading charges for local searches", deprecating the practice of charging a particular sum for a local search and retaining a refund of £20 as "commission". On 29th March 2001 an editorial appeared in the Gazette entitled "Don't cheat the client", making similar points.

52. It had been conceded in other proceedings that there was no obligation on members of the profession to read the Gazette. A notice in the Gazette could not be notice to the profession at large. The Respondent did not see either notice. He was not aware of the ruling made by the Compliance and Supervision Committee and as far as he was concerned nothing changed. He was unaware of anything about these arrangements that appeared in The Law Society's Conveyancing Handbook.

53. During 2001 The Law Society considered the conduct of another firm, Y, who used agents to carry out searches on terms identical to those that had been used in the case of X and were the same arrangements that the Respondent had with PSG. The initial decision taken was that the practice amounted to a breach of Rule 1. It was also recommended that The Law Society issue further "formal guidance to the profession on arrangements of this nature". Nothing further was done.

54. That decision in the case of Y was appealed and, by a decision made on 15th November 2001, the Adjudication Panel held:

(i) the failure to disclose the receipt of the commission to clients did not amount to taking a secret profit;

(ii) that the arrangements involved did have sound benefits to the clients is accepted by the Panel's solicitor;

(iii) the arrangements involved did not impugn the integrity of the solicitor or damage the reputation of the profession;

(iv) the fact that there was not a breach of Practice Rule 10 meant that on the same facts such circumstances could not amount to a breach of Practice Rule 1. The Panel therefore resolved to allow the application for review and to take no further action."

55. The Law Society was not content with that ruling and carried out an investigation in relation to the arrangements the firm of Z had with PSG. In this case commission was paid in the manner the solicitors acting for PSG had advised the Society would be done in their letter of 19th February 2001. Again those arrangements were found not

to constitute a breach of the Rules. In particular the Adjudicator concluded that she could "identify no conflict of interest issues here that raised any concerns in relation to professional conduct".

56. The Law Society was still not content with this and brought proceedings against the partners in the firm of Adcocks in relation to their arrangements with PSG which were identical to those in the case of the firm Z. When the matter came before the Tribunal the case was dismissed as being an abuse of process. On appeal by The Law Society to the Divisional Court, the Court held that the payments made by PSG were not a commission and did not therefore come within Rule 10. The Law Society was ordered to pay the costs of the Respondents both in the Divisional Court and before the Tribunal.

57. At paragraph 25 of the judgment of Waller LJ he said:

> "In the context of the history and confusion within The Law Society itself, it does seem extraordinary that any suggestion of "dishonesty" was ever made".

(The allegations against the Respondent originally included an allegation that his conduct had been "dishonest or in the alternative reckless", although that complaint was subsequently withdrawn).

58. At paragraph 32:

> "Of course, in considering whether the respondents were guilty of conduct unbefitting a solicitor, different considerations may apply. At that stage, if the profession, or a reasonable number of members of it, thought the Rule meant something different from its true meaning, that must affect the question whether the respondents were guilty of conduct unbefitting a solicitor, in their reliance on it."

59. At paragraph 34:

> "Rule 10 is concerned with commission and, in my view, what the respondents were doing in this case had nothing to do with receiving a commission…. Thus, in my view, Rule 10 on its proper construction, provided no answer to the conduct of the respondents in this case".

60. At paragraph 35:

> "First despite the clear view I have formed as to the proper construction of Rule 10, there is no doubt that other highly respectable and influential people in The Law Society have taken a different view. Even where conduct has been criticised the view has been maintained that Rule 10 is applicable to the type of arrangement that there was with PSG in this case. It is thus inconceivable that any Tribunal could find that the respondents were in any way dishonest and, as I have indicated already, it was unfortunate that that suggestion was ever made. It also seems to me very unlikely that an SDT would hold that these respondents had acted in a way unbefitting a solicitor……. …….Even if an SDT did come to the conclusion that the

conduct of the respondents fell foul of Rule 1, in that the arrangement which they made with PSG compromised their duty to act in the best interests of their client, it would be quite unfair to impose any great penalty on them, having regard to the way that others were treated internally by The Law Society."

61. The Tribunal was invited to find, as indicated by Waller LJ and previous decisions by The Law Society that, at the time at which the rebate of £20 was made, not least because that was accepted as being correct by a significant number of members of the profession as well as by people within the Law Society, the acceptance by the Respondent of that rebate from PSG did not constitute conduct unbefitting a solicitor and that in entering into those arrangements did not act in breach of Practice Rule 1(a) and/or 1(c) and/or 1(d).

Client care letters

62. The Respondent did not generally deliver "Rule 15"/client care letters to his clients. He did not think it was necessary for him to do so having regard to the personal nature of his practice. He was a sole practitioner and many of the people he acted for were repeat clients or personal friends. No complaint had been made by any clients.

63. As soon as the Respondent was informed of the strict requirements of Rule 15 he produced a client care letter which he sent assiduously to all his clients.

64. While it was accepted that the Respondent was not in the habit of sending Rule 15 letters to his clients, that was not itself a requirement of the Rule. It was described as "good practice". The main object of the Code was to make sure clients were given the information they needed. This was not a serious breach and Principle 13.01 and 02 did not suggest that a failure to comply with the Code would amount to a breach of Practice Rule 1. There should not be a finding of conduct unbefitting or a breach of Practice Rule 1 in connection with this allegation.

Telegraphic transfers

65. The system operated by Lloyds TSB Bank plc made it impossible to assess the exact cost of a bank TT. Rule 23 note 6(vi) of the Solicitors Accounts Rules provided that "the solicitor would be entitled to make a modest administrative charge in addition to any charge made by the bank in connection with the transfer". It was suggested that many solicitors and others make a TT charge of £30 or more.

66. Mr Hunter genuinely misunderstood the Rules regarding placement of this charge as a disbursement in the statement of account prepared or a client. It should have appeared as a service charge fee in the bill plus VAT. Either way, the charge to the client remained the same and no client had suffered any loss.

67. It was hard to recognise the purpose in bringing the disciplinary proceedings. What public good was served other than to heap opprobrium on the Respondent in the evening of his professional career. For many years he had sought to serve his clients and the profession, of which he was justly proud to be a member, to the best of his abilities.

68. In all the circumstances the Tribunal was invited to take no action or if it was felt necessary to mark the admitted breaches in some way, to do so as leniently as might be felt to be appropriate.

The Findings of the Tribunal

69. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

The Tribunal's decision and its Order

70. It was a matter of some concern to the Tribunal that the Respondent closed his eyes to the important Rules relating to practice as a solicitor. He had been very sloppy in his attempts to clear up residual client balances and sums of money that he had thereby appropriated to his own use were not always trivial. Although the Respondent's clients appeared to have been perfectly happy with the service delivered by him the gravamen of his situation was that he had not been completely frank and transparent with them. It might well have been that if the Respondent had met the requirement of providing client care letters it might have occurred to him to tell clients that he would derive a personal profit from the standard local search fee or standard telegraphic transfer fee charged by him and, indeed, in so doing would have made it plain that the telegraphic transfer charge was not a disbursement in respect of which he sought reimbursement.

71. The Tribunal accepted that the Respondent has been a solicitor for a long time and accepted that he, himself, had recognised that times have changed over the years and as and when new Rules are introduced, practising solicitors were obliged to comply with them. The Tribunal has given the Respondent credit for his admissions, the fact that he has put right the admitted breaches and the large number of testimonials written in the Respondent's support and the oral evidence as to his good character, all of which attest to his probity and professional competence.

72. In all of the circumstances the Tribunal concluded that it was both appropriate and proportionate to impose a fine of £2,500 upon the Respondent. The Respondent agreed that he should pay the Applicant's costs in the sum of £11,500 and the Tribunal so ordered.

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

W M Hartley
Chairman