

IN THE MATTER OF ANDREW DOIG BELMONT, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mrs J Martineau
Mrs V Murray-Chandra

Date of Hearing: 12th April 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 Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors of 342 Lytham Road, Blackpool, Lancashire, FY4 1DW on 7th August 2006 that Andrew Doig Belmont of 12A Churston Mansions, 186 Grays Inn Road, London, WC1Z 8ES, 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.

The allegations against the Respondent were as follows:

1. That contrary to Rule 22(5) and (8) of the Solicitors Accounts Rules 1998 the Respondent allowed client account to become overdrawn;
2. That contrary to Rules 32(1), (2), (3), and (4) of the Solicitors Accounts Rules 1998 the Respondent allowed client ledger to be in debit totalling £1,109,616.21 and outstanding postings totalling £427,320.55 to exist;
3. That contrary to Rule 32(7) of the Solicitors Accounts Rules 1998 a reconciliation had not been carried out between 30th June 2005, and the date of The Law Society inspection on 9th March 2006;

4. That contrary to Rule 7(1) of the Solicitors Accounts Rules the Respondent had failed promptly to rectify a minimum cash shortage of £122,916.94 that was in existence as at 21st February 2006.
5. It was further alleged that the conduct of the Respondent was unbecoming a solicitor in each or both of the following circumstances:
 - (a) That he failed to pay stamp duty and/or Land Registry fees on eight client matters after completion and the due date had passed;
 - (b) By virtue of the matters set out in ("the FI Report") dated 21st March 2006, acted contrary to Rule 1 of the Solicitors Practice Rules 1990, in that his conduct compromised or impaired or was likely to compromise or impair his independence or integrity as a solicitor, his duty to act in the best interests of a client or clients, his good repute or that of the solicitors' profession, and in particular that he failed to make any or sufficient enquiry as to funds received into and paid out of his client account.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 12th April 2007 when Stuart Roger Turner appeared as the Applicant and the Respondent was represented by Mr Andrew Hopper of Queen's Counsel.

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, Andrew Doig Belmont of 12A Churston Mansions, 186 Grays Inn Road, London, WC1Z 8ES, solicitor, do pay a fine of £2,000 in respect of each of the five allegations, making a total of £10,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

Preliminary application to amend the allegations

- (i) The Applicant sought leave of the Tribunal to amend allegations 1 and 2 in response to a request made that day on behalf of the Respondent. The suggested amendment to allegation 1 was the removal of "the Respondent allowed client account to become overdrawn" and the substitution of the words "the Respondent's client account became overdrawn". The suggested amendment to allegation 2 was the removal of the words "the Respondent allowed client ledger to be in debit" and the substitution of the words "a client account reconciliation showed a client ledger to be in debit". The original wording could be interpreted as meaning that the Respondent was responsible for these matters whereas it would be said on the Respondent's behalf that they had arisen through external forces.
- (ii) On behalf of the Respondent Mr Hopper said that two matters had come to light in the proceedings:
 - (i) the date that the matters came to the Respondent's knowledge; and

- (ii) the extent of the problem which was much smaller than had been thought.

This was not a case of the Respondent consciously allowing the matters referred to in allegations 1 and 2. He had not been aware of these matters for good reasons which would be explained to the Tribunal. If leave to amend the allegations was not granted the Respondent would maintain his admissions but would make his plea on a certain basis.

The decision of the Tribunal in relation to the preliminary application

- (iii) The Tribunal was reluctant to see an amendment to the allegations at the hearing. The allegations had been made in that form a long time ago. The application to amend the allegations was based on a semantic argument on the meaning of the word "allowed". The Tribunal did not consider that "allowed" necessarily carried an implication of the Respondent taking positive steps. There could be circumstances where "allowed" did mean positive action but the natural meaning of the word and its meaning in these proceedings was that the Respondent had overall responsibility for the accounts and the matters referred to in allegations 1 and 2 had occurred. The amendments to allegations 1 and 2 were therefore refused.

The substantive matter

The facts are set out in paragraphs 1-9 hereunder:

1. The Respondent, born in 1951, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. Following a notification made to The Law Society on behalf of the Respondent an inspection of the Respondent's firm's books of account was commenced on 9th March 2006 by a Senior Investigation Officer of The Law Society. A copy of the resulting Report dated 21st March 2006 was before the Tribunal. The Report noted the matters set out at paragraphs 3 to 7 below.
3. The inspection revealed that the books of account were not in compliance with the Solicitors Accounts Rules in that:
 - (i) a reconciliation dated 28th September 2005 showed client ledger accounts in debit in the sum of £1,109,616.21 and there were outstanding postings of £427,320.55;
 - (ii) there were no monthly comparisons of client cashbook with client bank statements and client ledgers since 30th June 2005 to the date of the inspection.
 - (iii) an independent accountant employed by the Respondent indicated that a shortfall in the region of £200,000.00 existed as at 31st December 2005.
4. The Respondent told the Senior Investigation Officer that he had been experiencing problems with the computerised accounting system "Quill". He had then employed an in-house bookkeeper who maintained a manual client cashbook and client ledgers on a receipts and payments basis. The Respondent said that he had not been aware of

any problems until February 2006. He had immediately instructed the independent accountant to review the situation who had told him of the shortfall in the region of £200,000. The Respondent had informed his bankers and the firm's insurers and upon advice from Mr Hopper had consented to Mr Hopper informing The Law Society of the situation on his behalf. The Respondent had also informed The Law Society's Compensation Fund.

5. The Senior Inspection Officer was unable to calculate the firm's total liabilities to its clients as at 21st February 2006 however, he was able to compute that a minimum cash shortage of £122,916.94 existed as at 21st February 2006. It was established that on 27 matters alone the liability to those clients amounted to £282,109.67 whereas only £159,192.73 was available leaving the shortage stated.
6. Within the list of liabilities there were at least eight clients where conveyancing transactions had been completed for some time and yet outstanding Stamp Duty and Land Registry fees were due and payable. For example £10,800 Stamp Duty had been outstanding since 15th September 2005 on the case of M; £14,250 had been outstanding since 9th September 2005 on the case of B and £10,750 Stamp Duty had been outstanding since 7th November 2005 on N. On one transaction the £10,875 Stamp Duty had been outstanding since May 2004.
7. The Senior Inspection Officer discussed the figures with the Respondent who accepted the position. It was not possible to identify the contributing factors in respect of the cash shortage of £122,916.94. The Respondent believed that it had been caused by an overpayment on matters conducted by a former assistant but there was no documentary proof of this.
8. On 27th March 2006 The Law Society wrote to the Respondent seeking his explanation concerning the matters raised by the Report. In the Respondent's reply he stated as follows:

"It is correct that the reconciliation dated 28/9/05 showed the client account in debit. At that time I believed that the account was not in debit but that Quill had posted monies to the wrong ledger card where, for instance, we had paid out mortgage monies on one matter but Quill had not attributed the monies received to that account.

My firm had been experiencing considerable difficulties with Quill over some time and we had taken a number of steps to resolve these problems including having a specific person at this firm to whom any Quill queries could be referred. I also sent my Office Manager to Manchester to see how Quill worked at their end. However the difficulties continued resulting in the meeting, the minutes of which are annexed to the report. Despite this meeting the service given by Quill still failed to meet what was required.

I therefore decided that I had no choice but to employ an in-house bookkeeper with a view of taking over from Quill. This bookkeeper was a Miss CB who is a member of the Institute of Legal Cashiers and is very experienced. Miss B started at this firm in January 2005 when she was instructed to go through all clients account shown by Quill to be in debit and to reconcile them.

I would also add that the meeting with Quill was on 7th September 2004, not 2005.

It is correct that Miss B maintained a manual cash book on ledgers which she reconciled each month. The handover from Quill preparing the accounts to Miss B doing the accounts was at 1st July 2005...

Turning now specifically to paragraph 14, I do not dispute any of the Senior Investigation Officer's figures...

- (i) I have not rectified the cash shortage, as my finances do not allow me to do so.
- (ii) I cannot give you further explanation than that I have already given.
- (iii) Miss B informed me that each month she did reconcile the accounts on a money received/money sent basis.
- (iv) I have already commented and really cannot say any more.
- (v) Due to the stressful situation, Miss B resigned at the end of February and the books have not been brought up to date.
- (vi) For some considerable time I have been suffering from stress and have been treated for depression by my doctor and I have to say quite frankly that I was not dealing with matters as well as I should have. When I took over this firm it had a turnover of approximately £60,000 per annum and in our last year our turnover was £650,000. I had effectively been the only person managing the practice and I am afraid the pressure of work meant that I suffered from continual stress, which led to depression.

I had therefore decided last year to significantly scale down the size of my practice to minimise or to reduce the stress.
- (vii) I am not able to pay any of the outstanding stamp duty but I am in the process of paying the Land Registry fees.
- (viii) Effectively my firm has now come to any end and I will be working for a local firm as a consultant..."I have fully appraised them of my situation. I will not be handling any client's monies."

9. On 26th April 2006 the Adjudication Panel of the Professional Regulations Session resolved to intervene in to the Respondent's practice and to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

10. The Respondent had admitted the allegations. The Respondent was to be commended in that he realised that there was shortfall, took steps to get advice and then instructed Mr Hopper to notify The Law Society. This had been followed by the inspection.
11. The intervention agent had taken the sum of £7,941.42 on intervention. As at November 2006 a huge shortage had been anticipated. To date £4,622.12 had been paid from the Compensation Fund in respect of three claims. There were total outstanding claims in excess of £58,000.00, but some of those might or might not be justified.
12. This case demonstrated a serious and flagrant breach of the Solicitors Accounts Rules by the Respondent in that he failed properly to manage client account funds, failed properly to protect client account money, and failed to provide clients with the proper stewardship of their money that they were entitled to expect and deserved from a solicitor.
13. The Applicant sought his costs in the agreed sum of £2,000.00.

The Submissions on behalf of the Respondent

14. The Compensation Fund figures had to be put in context. On paper the amounts looked very serious but one year after the intervention the Compensation Fund had paid out less than the money available to the intervention agent. The outstanding claims could fall either way.
15. The problem had been discovered at 2.15pm on 1st February 2006 by the Respondent. He had changed banks and the whole client account was moving from Barclay's Bank to Lloyds. He had expected a nil balance but to his horror discovered an overdrawn balance on the Barclays client account in excess of £66,000.00.
16. On 24th February 2006 Quill finally produced the reconciliation to June 2005. This was their last act as the Respondent had sacked them from June 2005. He had employed a book-keeper from January 2005 to include the transition period.
17. Everything the Respondent had done had shown the highest level of responsibility. He had employed an Independent Accountant who was a former Investigation Officer of The Law Society and the Independent Accountant, the Respondent and Mr Hopper had worked together in February 2006 to identify the shortfall and see if it could be repaid. If it was caused, for example, by an overpayment to clients it would be covered by insurance.
18. Unfortunately the underlying problem was sufficiently old and the errors made by Quill were so substantial that it was not possible to unravel the situation and therefore it was not possible to satisfy the insurers. The Respondent had no other source from which he could repay the shortfall so had self-reported the matter to The Law Society. The Tribunal was asked to conclude that from the moment the problem was discovered the Respondent had done everything a responsible solicitor would do.

19. Prior to the discovery there had been problems with Quill and the Tribunal was referred to the minutes of the meeting between Quill and the firm on 7th September 2004.
20. The Tribunal was also referred to the letter dated 10th April 2007 from the Respondent's Consultant Accountant, Wilkinson Read & Partners who stated:

"Wilkinson Read & Partners first started working for Belmont Hansford in August 2003. Our brief was to help the firm become more successful and profitable...

Upon closer investigation with fee earners, we repeatedly encountered the comment that "I have processed that but Quill have made a mess of it" or very similar comments. Therefore I asked Andrew Belmont to arrange a meeting with Quill to establish the reasons for these mispostings and to get corrective action taken...

The first such meeting was run by Andrew's colleague, SR, in early 2004 but it became evident before long that the meeting had not had the desired effect and there were still complaints by fee earners about misposting of entries. As a consequence, we invited Quill to a further meeting which was chaired by myself on 7th September 2004. Our starting point (as Wilkinson Read) was that we regularly encounter outsourced service arrangements where things are not quite working. Usually this is not a one-sided affair and there is miscommunication on both sides. So as a party external to the arrangements, we attempted to take an even-handed approach; rather than apportioning blame, were looking for solutions. Quill seemed to be taking the issue seriously, as their two representatives included their Director Mr PD. Comprehensive minutes were taken of this meeting and a detailed action programme was outlined....

We had high hopes of that meeting...

Unfortunately, it appears that Quill suffered a degree of staff turnover and the staff subsequently assigned to the Belmont Hansford account failed to honour the commitments which had been made at the October meeting. This increased the degree of frustration to the point where Belmont Hansford decided to dispense with Quill's services and engage a Legal Cashier to prepare the accounts using manual ledgers rather than a computer system..."

21. The Tribunal was also asked to note that the letter was complimentary to the Respondent's bookkeeper Ms B, but raised some concerns about his assistant Ms A as a source of problems:

"From our point of view, the net effect of Ms A's arrival had been to reduce Mr Belmont's productive activity by approximately 70% which is an indicator of the effect that the stress was having on his ability to perform in his normal way. It became extremely frustrating for us, not only that the profitability was going backwards but it also became increasingly difficult to get relatively routine systems and procedural improvements to be adhered to."

22. Quill operated outside the firm. The firm would send the bookkeeping paperwork which should have been processed but this had not happened. The firm had had a long association with Quill. The problems had started in 2003 and escalated in 2004. Quill's failure had caused the firm's problems.
23. Having identified Quill's problems the Respondent had engaged the outside Consultants to assist. From September 2004 to January 2005 he had given an appropriate period of time for Quill to resolve their problems but when the problems persisted he had got rid of them. He had appointed his own bookkeeper to overlap with Quill.
24. The accounts were adequate but there was evidence of poor bookkeeping practice by Quill from 2003. The Respondent had not seen any money going missing but the poor performance by Quill as his external book-keepers had continued in 2004. The Respondent had to be satisfied that his accounts function was being performed adequately and that the books were correctly written up. Quill was failing. He had tried to assist them and had then sacked them. From 1st July 2005 Quill's only role had been historical.
25. From 1st July 2005 – February 2006 the manual books kept by Miss B were perfect although she did not have a starting figure from Quill. The Respondent however was being told by Quill that the end of year was clean and that there was no problem other than that they had not yet processed it.
26. The Tribunal was referred to the letter dated 28th June 2005 from Miss B the bookkeeper to the firm's chartered accountant describing the Quill system and the problem.
27. The Tribunal was further referred to the letter dated 11th October 2005 from the Respondent to Quill Pinpoint Accounting Ltd in which he stated:-

"You agreed [Miss B] could have a separate discussion with CD to enable her to find her way around your end of month print outs for June. In particular she needs at 30.06.05:

- (a) Client Ledger Balances
- (b) Client Account Cash Book c/f balance which will be our opening balance at 1.7.05
- (c) List of outstanding/unpresented cheques – Client Account
- (d) Bank Reconciliation – Client Account
- (e) Office Account Cash Book c/f balance which will be our opening balance at 1.7.05
- (f) List of outstanding/unpresented cheques – Office Account
- (g) Bank Reconciliation – Office Account

You agreed to produce the Year End Reports for our Accountant. You agreed to send Miss B printouts of all the Client Ledgers with balances to 30.6.05.

You also agreed to enable us to continue to have a Quill Accounts look only facility on our computer for the time being at a nominal cost."

The Respondent was pushing in October 2005 for the year end information which had still not been provided.

28. In a further letter to Quill Pinpoint Accounting dated 6th January 2006 the Respondent had written:

"I refer to our bookkeeper, [Miss B's], telephone conversation with you today reminding you of what we agreed with Quill Pinpoint Accounting Ltd and as set out in our letter dated 11th October 2005.

I confirm we have not heard from you since that date, nor have we received any papers.

[Miss B] has telephoned CD on a couple of occasions and was told he was off sick for some time. Messages were left for him to contact [Miss B] on his return for the purposes set out in our October letter. Again, no contact has been made. [Miss B] and I were pleased to learn today that he has now returned to work.

We obviously urgently need a proper handover from Quill. In addition, our Accountant is asking for the Year End Reports.

I should be grateful if you would now expedite matters".

The Respondent was still chasing the year end figures in January 2006 but they were not received until February 2006 after he had identified the problem.

29. The discrepancy on client account had not been obvious on the bank statement. The only way to establish a shortage of a rolling nature was either through reconciliations or, as the Respondent had done, to withdraw all the money from client account when he moved from Barclays to Lloyds. This had identified the overdrawn Barclays' client account. All reconciliations had been done from July 2005 but without a starting figure. The bookkeeper Miss B had balanced the books month by month but could not give the historical position without the yearend figure from Quill. This crucially affected her ability to do full reconciliations.
30. There had been nothing to put the Respondent on notice of the problem or of the need to look at individual files as Miss B was saying there was no current problem and Quill was saying that there was no historical problem.
31. The Quill information coming in on 24th February 2006 had been certified as a true copy by the Intervention Agents.
32. It was fundamental to a fair assessment of any penalty to be imposed on the Respondent that the only thing the Respondent could have done further was to be more aggressive with Quill. He was admitting the allegations on that basis but had believed at the time on the basis of information from Quill and the book-keeper that there was

no problem. He had worked with the consultants and with the book-keeping service to improve their performance. When performance had not improved he had brought their services to a controlled end.

33. The Tribunal was asked to consider what had occurred against two background factors. Ms A had created a background against which a shortage could occur. The Respondent had tried to help her. She generated complaints including with post completion matters. She carried out multiple transactions with a small number of clients and these were circumstances in which errors could occur and remain undetected. The Respondent had good reason to believe that it was one of Ms A's clients who had been overpaid. A complaint had been made about her by the Respondent to The Law Society but it was accepted that there was no evidence before the Tribunal that the fault was hers.
34. The Respondent had been advised that intervention was inevitable and he had run down his practice, recommended his clients elsewhere and ringfenced funds for identifiable clients. The Law Society had understandably decided not to investigate further despite the Respondent's urging but the Tribunal was asked to note that the original expectation of a high shortage had not in fact been realised.
35. The Respondent had been made bankrupt on his own petition on 16th June 2006 as a direct result of the intervention and the collapse of the practice.
36. The Tribunal was asked to note the medical evidence and in particular the reference to the intolerable levels of stress from which the Respondent had suffered due to amongst other matters, the poor performance of others.
37. The medical report further said:

"It is clear from the evidence set out above that in the circumstances described, Mr Belmont's actions in his practice at the material time would have been far less insightful and deliberate than when he was in a normal state of health. This is the essential causative factor in the problems that arose.

Now that the stressful factors have been removed, I believe that there is no reasonable likelihood of any recurrence of the problems that occurred in Mr Belmont's professional practice. In particular, he shows good insight into the way that these problems developed.

So far as Mr Belmont's current state of health is concerned, I regard this as excellent from the psychiatric point of view. He has not required to take any medication for some weeks now. Therefore, there could not be any continuing risk of this kind".

38. The psychiatric Report had not been challenged and the Tribunal was asked to take it into account. The Respondent had been suffering from an identifiable medical condition at the relevant time. This was relevant to delays in post completion matters and as to why the Respondent had not pushed Quill harder.

39. There was no suggestion before the Tribunal that the Respondent had personally created the client account shortage.
40. The overdraft on the Barclays account had been secured on property and there had been no shortage of client money through that cause. The shortage shown in the Report for the previous accounting period 2003/04 had been put right and the evidence did not indicate a rolling loss.
41. The Respondent had cooperated throughout with everyone and had come before the Tribunal to admit his fault.
42. The Respondent had been working as a locum in civil litigation to cover a maternity leave since September 2006. He had gradually worked his way back to stable health. There would be a small overall deficiency in his bankruptcy due to a capital gains tax liability on the sale of the properties which were his pension fund. He had lost his practice and his pension and was reduced to a very modest living in a home which belonged to his partner. The Respondent's fault was so modest and the extent of the consequences on him so extensive that this matter did not need real punishment. The Tribunal would take note of the public perception. The Respondent had no desire to return to sole practice and no protective order was needed. The Tribunal was asked to impose a modest penalty in recognition of the fact that solicitors always had to be responsible for what went on in their practice. The Respondent had behaved responsibly, had taken advice, had called in The Law Society and had wound down his practice so that the clients were not affected.
43. The Respondent had agreed the Applicant's costs, although subsequent representations would be made to The Law Society about whether they should be enforced.

The Findings of the Tribunal

44. The Tribunal found the allegations to have been substantiated indeed they were not contested. The Tribunal had paid careful attention to the submissions on behalf of the Respondent. The Tribunal's conclusion however was that the admitted allegations were properly described by the Applicant as serious and the Tribunal did not consider that it would be right to take quite such a lenient view as had been urged on behalf of the Respondent. The Tribunal was not in any way suggesting that the Respondent had been dishonest, indeed dishonesty was not alleged against him. The Tribunal also recognised from the medical evidence that the Respondent had been stressed and depressed at the time these events occurred. The Tribunal considered however that the Respondent had, despite the mitigating factors, not taken sufficient steps in the light of the warning signs. He had a responsibility to protect the public but had taken inadequate steps to do so. The breaches could and should have been prevented. The Tribunal had taken due note of the references in support of the Respondent. The Tribunal was satisfied that in all the circumstances the appropriate penalty was a fine and the Tribunal would impose a fine of £2,000.00 in respect of each allegation together with the Applicant's agreed costs. The Tribunal noted that certain limitations on the Respondent's right to practise had been imposed on his Practising Certificate. This seemed to the Tribunal to be entirely proper and a matter to which the Solicitors Regulation Authority could continue to have regard as part of its regulatory functions. There was no need for the Tribunal to make any further protective Order.

45. The Tribunal Ordered that the Respondent, Andrew Doig Belmont of 12A Churston Mansions, 186 Grays Inn Road, London, WC1Z 8ES, solicitor, pay a fine of £2,000 in respect of each of the five allegations, making a total of £10,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered him to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

DATED this 10th day of August 2007
on behalf of the Tribunal

A H Isaacs
Chairman