

IN THE MATTER OF DERYCK ROBERT LINDSEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Ms A Banks (in the chair)
Mr J R C Clitheroe
Mrs V Murray-Chandra

Date of Hearing: 24th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by George Marriott a solicitor and partner in the firm of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 19th December 2008 that Deryck Robert Lindsey of Mair Williams Solicitors, Parc Merlin, Glanyrafon Industrial Estate, Aberystwyth, Ceredigion 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 against the Respondent were that he:-

1. Improperly used clients’ funds for the benefit of unconnected third parties;
2. Misled two clients;
3. Failed to comply with Rule 22 of the Solicitors’ Accounts Rules 1998;
4. Used his Client Bank Account as a banking facility;
5. Breached two undertakings;

6. Misled a firm of solicitors;

Dishonesty was alleged in relation to two matters the subject of allegations 1 and 3.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2009 when George Marriott appeared as the Applicant and the Respondent appeared and was represented by Mr Geoffrey Williams QC.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant dated 19th December 2008 with accompanying bundle which included a Forensic Investigation Report (“FIR”) dated 6th December 2007, the admissions of the Respondent, a letter dated 27th October 2003 from a Consultant Psychologist to the Respondent’s General Practitioner and a number of character references on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, Deryck Robert Lindsey of Mair Williams Solicitors, Parc Merlin, Glan yr Afon Industrial Estate, Aberystwyth, Ceredigion, SY23 3JQ, solicitor, be suspended from practice as a solicitor for the period of three months to commence on the 1st day of October 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

The facts are set out in paragraphs 1 – 62 hereunder:-

1. The Respondent was born in October 1947 and was admitted as a solicitor in November 1972. His name remains on the Roll. He was a partner in Northen & Lindsay until 31st April 2004, an associate with Rich & Carr from 1st May 2004 until 25th January 2007 and he was a consultant for David James & Partners until the partnership was dissolved on 17th October 2008 and is currently a consultant with Mair Williams Solicitors. His last address is Mair Williams Solicitors, Parc Merlin, Glanrafon Industrial Estate, Aberystwyth, Ceredigion.
2. On 1st May 2004 Rich & Carr (“RC”) acquired the practice of Northen & Lindsey (“NL”) of which the Respondent was a partner.
3. At the time of the acquisition, RC took NL’s bookkeeping system and transferred it to its own accounting system. However, NL continued to operate its old office account, to which the Respondent was a signatory, in order to allow the partners to continue to separately collect any fees or costs owed to them and also to meet any outstanding liabilities.
4. RC undertook its own investigation into complaints received regarding the Respondent’s conduct in relation to a number of client matters.
5. The Respondent resigned from RC on 25th January 2007.

6. The SRA visited the head office of RC at 24 Rutland Street, Leicester on 7th February 2007 and reported the findings of their investigation on 6th December 2007 following which the Respondent was invited to comment on certain points raised in the report.
7. The SRA's report set out a number of allegations against the Respondent in relation to his conduct in handling certain matters.

Estate of AJP (deceased)

8. The estate of AJP was a small estate consisting mainly of a property in Lutterworth.
9. Under the terms of the Will, which NL drafted, his widow, GP, was entitled to a life interest in the property. However, GP decided to sell the property for £69,950.00 and purchase another property in Crawley with some of the proceeds.
10. The Crawley property was sold in November 2001 following which the profits realised on the sale, which totalled £97,305.14, were paid into a designated client account on 21st November 2001.
11. RC received complaints made on behalf of GP between 2005 and 2006 to the effect that unauthorised withdrawals had been made from the designated client account.
12. On 26th July 2004 £60,000.00 was withdrawn from the designated client account and transferred to NL's general client account; this transfer was also recorded on the client ledger. This transfer occurred after NL's merger with RC when all of NL's client accounts were supposed to have been incorporated with RC. However, NL's general client account still recorded a balance of £324,335.79.
13. On 2nd August 2004 £58,700.00 was debited from the client ledger, the description given for the transfer was "e T...". The Respondent acknowledged that the record on the client ledger for AJP reading "e T..." was actually a payment to GT. NL's client bank account showed £58,700.00 was debited on 5th August 2004.
14. A copy of the cheque showed the payee as Mr GT and was from NL's client account. The signature on the cheque matched the signature of correspondence from the Respondent.
15. RC received a further letter of complaint in relation to the Respondent's work from PL dated 23rd October 2006. In the letter PL stated that the Respondent had acted for her father, GT in a claim against Leicestershire Police, "He won his case and received just under £60k in compensation which was delivered by yourself to your (sic) home address in August 2004".
16. RC were unable to locate any file in relation to GT and an action against the police however, they did come across a ledger headed "T, Mr G Assault (2)". The ledger did not contain any record of damages being received or paid out. The ledger listed the Respondent as the partner in charge of the matter.
17. PL's letter of complaint also mentioned a matter running alongside GT's matter which was SL's claim for compensation. According to PL she had had confirmation that the

Respondent was dealing with the matter and that despite promises to hand deliver a cheque for compensation nothing had been received. PL stated that the Respondent had claimed that SL's claim would be worth over £2,000.00.

18. The GT ledger recorded a debit from office account for £2,500.00 on 7th November 2006. The description of this debit was "trans s L... chq".
19. In his explanation to the SRA the Respondent stated that he issued proceedings in the matter of GT but then failed to serve them within the allowed period, resulting in the claim being time barred. He also admitted that he failed to communicate this fact to his client.
20. A file note recorded a conversation between the Respondent and PL on 17th August 2006. SL was at that time aged 21. If the incident from which SL's claim arose was from the same circumstances as GT he was a minor at the time and therefore his limitation period would have expired on his 21st Birthday. Unless proceedings had been issued then SL's claim would have been time barred on his 21st birthday. When SL received his cheque from the Respondent his limitation period had expired.
21. The Respondent had misled his clients. PL's letter dated 23rd October 2006 to the Respondent refers to GT receiving just under £60,000.00 compensation. However, this money was not compensation from a defendant, but money taken from AJP's estate, used to make good the compensation that GT may have received from a defendant had his case continued.
22. No client file for GT's matter has been located.
23. The ledger marked "T..., Mr G" has no record of the payment of £58,700.00 being made.
24. On 1st March 2007 the SRA interviewed the Respondent. The Respondent accepted that reference on the client ledger to "e T..." was a typographical error and should have been GT. He admitted that he had dealt with GT's matter and had advised him to pursue a civil claim, but it had dragged on and he was under pressure from the client. The Respondent believed that the payment of £58,700.00 was considerably more than he would have received had the matter been pursued fully. The Respondent admitted that he had been negligent in the handling of the matter in that he had failed to pursue the claim properly and refer the matter to insurers "It was completely mad". The Respondent also admitted that he paid SL £2,500.00 from office account.
25. £58,700.00 was reimbursed to the AJP estate on 25th January 2007 by the Respondent's former partner from NL.
26. In further correspondence to the SRA the Respondent admitted that he had made unauthorised withdrawals from the AJP estate to satisfy the claim of another client.
27. With regards to SL's claim the Respondent admitted that the money paid to SL had come from NL's office account. He stated that he held the opinion that SL had no

real basis for a claim but that he had agreed to try to obtain some ex-gratia payment for SL, running along with GT's claim.

Estate of WCS (deceased)

28. The Respondent also acted for the estate of the late WCS. On 23rd April 2002 he transferred from the ledger of WCS £3,000.00 in favour of "S...R..." The effect of this transfer was to reduce the client ledger balance to £739.62. It was clear from the client papers that the transfer was not connected to the estate. In fact S R was Counsel who was owed fees by the Respondent on an unconnected matter.
29. The SRA questioned the Respondent on 1st March 2007 regarding this transfer. The Respondent admitted that the payment had nothing to do with the administration of the estate. He stated that he was "not in funds" but was under pressure to pay Counsel's fees.
30. The transaction in question occurred in April 2002 over two years before RC took over NL.
31. On 6th March 2007 a transfer of £3,000.00 was made from office account to client account to rectify the shortage by a former partner of the Respondent.

Banking Facilities

32. In 2002, PH instructed the Respondent in respect of commercial loans which he and his companies had taken out where he was in difficulty in making repayments. The debts were due to an assignee namely CW.
33. PH started to receive threats of bankruptcy petitions and winding-up proceedings from CW who appeared to have purchased the debt.
34. On 7th May 2002 PH transferred £43,356.33 to the NL client account. The debt at this time amounted to approximately £300,000.00, however, CW were willing to waive the interest due if they received the capital sum.
35. Having received this money, the Respondent then made various payments back to PH as follows:-
 - 29th May 2002 - £6,000.00 to "H..."
 - 5th June 2002 - £8,000.00 to "H..."
 - 20th June 2002 - £10,000.00 to "H..."
 - 28th June 2002 - £17,000.00 to "H..."

36. These entries, coupled with costs and disbursements, had the effect of reducing the client's funds from £43,356.33 to £1,153.82 in less than two and a half months.

Breaches of Undertakings

37. MH wished to invest in PH's companies by the purchase of shares from PH for £57,000.00. By letter dated 18th July 2002 the Respondent proposed on PH's behalf

that provided the share sale went ahead PH would be prepared to release £57,000.00 to discharge his indebtedness to CW.

38. On 24th July the Respondent wrote to CW informing them that the sale of shares would generate £60,000.00. The letter stated “We confirm that when this transfer has been completed we will hold that sum of £60,000.00 with a view to the whole of the monies being applied to discharge in part our client’s outstanding debt to your clients.” The letter stipulated conditions that the monies would be released after the Respondent had received:-
1. Confirmation as to exact amount including interest that PH owed.
 2. Confirmation that the monies sent were to be paid to CW.
 3. An agreed repayment plan for the outstanding balance.

In summary, the SRA allege that the Respondent had therefore undertaken with CW in the above terms.

39. The Respondent wrote to MH’s solicitors on 26th July 2002 and undertook to hold the whole of the proceeds from the transfer of the shares until:-
1. The Respondent had obtained confirmation from CW that their clients had no further interest in TMC Limited.
 2. The original lenders are able to give valid receipts for monies paid in consideration of relinquishing any interest in TMC Limited.
40. The client ledger recorded the receipt of £60,000.00 from MH via his solicitors into his client account on 30th July 2002 and the following day it was deposited in a designated account with Bristol & West. The Respondent wrote to PH on 31st July confirming to him the conditions upon which the monies were held.
41. CW calculated PH’s total liabilities including interest on 2nd August 2002 as £591,365.81. PH did not agree with this figure. CW also requested that the Respondent enter into an undertaking with them confirming that the funds which he held would be held to Joint Order “until such time as matters are resolved”.
42. MH’s solicitors also wrote to the Respondent asking to be kept informed as to negotiations as eventually they would have to release him from his undertaking.
43. CW emailed the Respondent on 9th August 2002. The email referred to correspondence sent directly from PH to CW in which he confirmed that he had £50,000.00 in his possession which could be forwarded without delay to illustrate his intention to make repayments. The Respondent was asked to confirm whether these funds were still available. CW considered that PH should be able to make a payment of £110,000.00 to “reduce his liability dramatically”.
44. Some time around end of August 2002 CW had instructed solicitors in an attempt to force the Respondent to release the monies held.

45. A file note dated 4th September recorded a conversation between the Respondent and PH which suggested that PH had come to an agreement with CW regarding a repayment plan.
46. Solicitors for CW wrote to the Respondent on 9th September 2002. The letter stated that although no repayment plan had been agreed their clients were encouraged by negotiations. Further the letter commented that the Respondent's only bar to releasing the money was due to lack of evidence as to the assignment of the debt to CW. Enclosed with the letter was confirmation that the assignment had taken place. The further letters from other parties to the assignment were anticipated.
47. A file note dated 11th September recorded the Respondent's attendance on PH. The note stated that PH was prepared to release £60,000.00 provided there was a settlement which stated precisely how much was owed and assurances that CW would not contact any of PH's acquaintances. PH therefore wished to add more terms to the undertaking which the Respondent had already given to CW.
48. These additional terms were put to CW solicitors by letter on 3rd October 2003.
49. On 7th October 2002 MH's solicitors faxed confirmation to the Respondent that the funds could be released to CW, and thereby releasing him from his undertaking. However, the funds were not transferred.
50. On 14th October 2002 CW via their solicitors wrote offering a further undertaking that they would comply with the extra conditions as documented in the file note of 11th September 2002 subject to the immediate payment of £60,000.00 to them held by the Respondent and the Respondent was to remain instructed by PH. They stated that PH's total debt was £548,170.32 (over £43,000.00 less than the sum quoted in August). PH then told the Respondent not to release the monies to CW.
51. On 14th January 2003 the Respondent wrote to his client PH and stated that he could only release the £60,000.00 to CW or return it to MH's solicitors.
52. However on 19th November 2003, a transfer for £15,000.00 in favour of PH was made from the general office account. There was no explanation on the file for this withdrawal.
53. Between 19th December 2003 and 23rd December 2004 the Respondent made the following payments directly to PH:-
- 19th December 2003 - £5,000.00 to "H..."
 - 23rd February 2004 - £5,000.00 to "H..."
 - 3rd March 2004 - £3,000.00 to "H..."
 - 23rd December 2004 - £3,000.00 to "H..."
54. In March 2004 the Respondent was contacted by new solicitors instructed by CW.

55. In September 2004, the Respondent wrote to MH's solicitors and confirmed to them that they continued "to hold funds on behalf of (PH) as the creditors claim has not been resolved".
56. On 23rd January 2006 PH emailed the Respondent and stated "Understand you will call me today or tomorrow with details of the funds – certainly hope you could release all if possible including accrued interest!"
57. On 31st January 2006 £6,170.00 was paid from client account to PH.
58. The Respondent wrote to MH's solicitors on 1st February 2006 seeking their authority "to release all or part of the monies we hold on behalf of (PH)". At the time of this request the Respondent held £18,185.58.
59. A file note, created by the Respondent, supposedly recorded an agreement with MH's solicitors whereby £10,000.00 could be released to PH which the Respondent did on 16th March 2006.
60. On 5th April PH emailed the Respondent giving details of his financial trouble. The email stated "UK positives – The 50K still in your account!!!" However, at the time of the email PH only had £1,120.76 in client account.
61. There is no reference to the Respondent correcting PH's mistaken belief that he still had assets of £50,000.00 in client account.
62. On 19th October 2006 the designated client account was closed with the final balance of £1,136.15 being transferred to the general client account and then £950.00 was sent to PH. No money was ever transferred to CW, or their solicitors; or MH, or his solicitors.

The Submissions of the Applicant

63. The Applicant indicated that, having discussed the matter with the Respondent and his representative today, he would drop any allegation of dishonesty in relation to allegations 2, 4 and 6. This was agreed by the Tribunal. The other allegations were admitted save in allegations 1 and 3 dishonesty was only admitted in the two out of three instances cited by the Applicant, the other instance being a withdrawal of money from office account.
64. Costs in the sum of £12,000 had been agreed with the Respondent.

The Submissions of the Respondent

65. Mr Williams QC indicated on behalf of the Respondent that the Respondent entered the pleas indicated by the Applicant. Within those pleas were pleas of dishonesty to two isolated and discreet acts of the debiting of £58,700.00 on 5th August 2004 and of the £3,000.00 on 23rd April 2002.
66. Mr Williams indicated that his client was wholly contrite and understood that the Tribunal must consider a sanction of striking off in this situation. However, he

submitted that in particular circumstances a strike off need not be ordered. In those circumstances the Tribunal would need to consider whether the actions of the Respondent fell within the “very small residual category of cases of dishonesty where striking off may not be appropriate” referred to by the Divisional Court in Brendan John Salsbury v the Law Society [2008] EWHC 889 (Admin) at paragraph 22. The Respondent’s personal circumstances were that he had been admitted in 1972 and had never had any disciplinary proceedings brought against him nor Law Society rebuke or reprimand. What was before the Tribunal today was the full extent of his whole life’s wrongdoing.

67. The first act of dishonesty to which the Respondent had admitted was in April 2003. This was an aberrational and uncharacteristic act committed at the age of 55 years and Mr Williams submitted to the Tribunal that, given his age at the time, this showed no propensity to act dishonestly on behalf of the Respondent. Each of the acts of dishonesty admitted were at a time when the Respondent had been under great pressure.
68. In regard to the first act of dishonesty there had been no attempt by the Respondent to cover it up. In regard to the second act the Respondent could not cope at that time with his workload and again made no attempt to conceal the matter.
69. Mr Williams submitted that in the experience of the Tribunal such behaviour traits tended to be amongst the younger members of the profession. However what had occurred here was the first act of dishonesty of a 55 year old and had been wildly out of character. Mr Williams submitted that the matters concerning providing banking facilities in respect of PH should not trouble the Tribunal greatly. PH had been a businessman under financial pressure and the Respondent had known both the client and the source of funds. PH had lawfully instructed the Respondent to make payment in tranches and despite the fact there were no underlying transactions relating to those tranches the Respondent had followed the client’s instructions and there was no impropriety.
70. In regard to the breach of undertakings, the underlying transactions were perfectly lawful. However, the Respondent had become suspicious concerning the activities of CW and needed to prove that CW were a proper assignee. There was in the end no shred of documentary evidence that CW were entitled to these monies and indeed CW have never received anything from PH. In short the Respondent did admit to breach of the undertakings but in looking at the matter he was entitled to have the whole of the surrounding circumstances considered. It could be seen from reviewing the evidence that the Respondent had paid PH all of his own money back and that CW have now disappeared. Whilst it was true that the Respondent should have asked for a release or held on to the money indefinitely or gone to Court the end result of the matter was that there had been no loss to anyone and the Respondent had done the right thing by his client.
71. The Respondent had always worked hard and it could be said that he had overworked and was a workaholic. The pressures that he was under were awful and he was unable to cope and had suffered from depression. He would spend time in the office in tears and questioned on his way to the office as to whether he would be able to cope with the pressure. He would often be unable to face even going to the office at all and had

become suicidal. He had been put on to anti-depressants and would have to take them for the rest of his life.

72. In January 2007 he had been to see Mr Northen and had confessed everything to him. He had then gone to see Mr Roberts and had resigned from his position in the partnership. He had co-operated fully with the SRA.
73. Mr Williams indicated that the Respondent and his wife had now moved to West Wales where he was now able to work part-time on matrimonial and conveyancing matters. His health problems were now under control.
74. In summary, it was submitted on the Respondent's behalf that he had had an exemplary career until 5 – 7 years earlier. He had gained absolutely nothing from his behaviour and had repaid any monies owed. His insurers had dealt with all of the matters immediately and he had fully co-operated with the solicitors acting for the insurers. From a personal point of view he had cashed in his pension and would be paying £500 per month for life to the insurance company as a result of the civil judgment and charging order made by them. Mr Williams respectfully submitted that if the Respondent were to lose his livelihood as a result of today's proceedings he would lose his home and the insurers would lose their repayments. This was a matter that the Tribunal could take into account in sentencing.
75. Mr Williams submitted that in summary the circumstances here did fall within the "small residual category of cases of dishonesty where striking off may be not be appropriate", discussed in the case of Salsbury for the following reasons:-
- (a) This was aberrational misbehaviour and the Respondent had shown no propensity to offend.
 - (b) The Tribunal was dealing with a man who was fundamentally honest, decent and good.
 - (c) There had been no gain to the Respondent. Whilst thoroughly dishonest people will commit acts of dishonesty for their own gain there was no question of that here.
 - (d) The Respondent had made no attempt to cover his tracks.
 - (e) It was plainly the case here that the wildly aberrational acts had taken place whilst the Respondent had been a sick man. Depression had clouded his judgment and affected his decision making to a disastrous degree.
76. On the question of disposal Mr Williams indicated to the Tribunal that there were two purposes of sentencing, the first was for punishment and the second for maintenance of the reputation of the profession. In regard to punishment the Respondent had been living with this matter for several years, today's hearing being the culmination. He had been supported by the profession and by his loving family as could be clearly seen from his references. Whilst he had agreed to pay costs of £12,000.00 which had been reasonably incurred they were not a penalty but certainly did feel like one. In relation to maintenance of the reputation of the profession Mr Williams submitted that

an informed public would understand why the Respondent should be left on the Roll and that he was a decent man. He had glowing testimonials and no outstanding complaints against him. In summary Mr Williams submitted that the Respondent was of no risk at all to the public and that his conduct since the events in question fully supported that view point.

77. Until December 2007 the SRA had been content that the Respondent holds an unconditional practising certificate but since 2nd September 2009 conditions had been imposed upon it. His current employment had been approved by the Law Society again on certain conditions. It was important to note that in the SRA's view the conditions would, in the public interest, limit, halt or prevent the Respondent's involvement in similar activities to those identified and the subject of these proceedings. The Adjudicator had made the following comments in reaching her published decision:-

“I am further satisfied that there is no risk to the interests of the public or the profession in permitting Mr Lindsey's employment with Mair Williams on the terms stated. I am satisfied that Ms Williams will be able to provide him with the necessary level of support and supervision.”

78. Mr Williams therefore submitted that these were factors that should be taken into account and the conditions of practice could be considered as part of the penalty in this case. In that regard Mr Williams cited the findings of the Administrative Court in the case of R (on the application of Camacho) v the Law Society [2004] EWHC 1042 (Admin).

The Findings of the Tribunal and its Reasons

79. The Tribunal found that the circumstances here fell within the small category of cases of dishonesty where striking off may not be appropriate. It had given the matter anxious consideration and had reached its conclusion in considering the limited extent of the dishonesty in this case and the five reasons cited by Mr Williams in mitigation, as well as looking at the circumstances of the case as a whole.
80. In addition, the Respondent had demonstrated genuine remorse and had taken steps to rectify the position. The Tribunal was satisfied that at the time of these events the Respondent had, due to ill-health, suffered from a lack of judgement which had led to the two admitted allegations of dishonesty against him and that these were isolated incidents in his career, as indicated by the references that had been given on his behalf.
81. However, the matter was so serious that a financial penalty would not be appropriate. In this case therefore they were minded to suspend the Respondent from practising for a period of three months from 1st October 2009. The conditions imposed upon his practising certificate by the SRA ensured that he was closely monitored at all times and the Tribunal suggested that these conditions should continue:-

- (1) That he may act as a solicitor only in employment which has first been approved by the SRA.

- (2) That he is not a sole practitioner or a manager or owner of a recognised body.
- (3) That he shall immediately inform any actual or prospective employer of these conditions and the reason for their imposition.

82. The Tribunal Ordered that the Respondent, Deryck Robert Lindsey of Mair Williams Solicitors, Parc Merlin, Glan yr Afon Industrial Estate, Aberystwyth, Ceredigion, SY23 3JQ, solicitor, be suspended from practice as a solicitor for the period of three months to commence on the 1st day of October 2009 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

Dated this 26th day of January 2010
On behalf of the Tribunal

A Banks
Chairman