

IN THE MATTER OF MICHAEL GAYE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

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Mr A G Ground (in the chair)  
Mr R Nicholas  
Mr D E Marlow

Date of Hearing: 21st May 2009

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## **FINDINGS**

of the Solicitors' Disciplinary Tribunal  
Constituted under the Solicitors' Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Katrina Elizabeth Wingfield a solicitor and a member in the firm of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR, on 3<sup>rd</sup> April 2008 that Michael Gaye of Kitson Hutchings, 14 Devon Square, Newton Abbott, Devon TW12 2HR, a 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 against the Respondent, Michael Gaye, were that he was guilty of professional misconduct in that:-

1. He had acted where his own interests had conflicted with the interests of clients by lending monies to various clients and failing to ensure that they obtained independent legal advice.
2. He had acted in breach of the Solicitors Accounts Rules 1998 (Rules 1(a), 1(d), 22(1), 22(6) and 30(2)) by placing payments received in respect of loans into client account and then transferring them into his own personal account.

3. He had failed to honour undertakings and/or professional obligations in relation to property transactions.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 21<sup>st</sup> May 2009 when Katrina Elizabeth Wingfield appeared as the Applicant. The Respondent, who was present, was represented by Richard Nelson of Richard Nelson Solicitors, Priory Court, 1 Derby Road, Nottingham NG9 2TA.

The evidence before the Tribunal included the admissions of the Respondent to the three allegations.

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

The Tribunal Orders that the Respondent, Michael Gaye of Kitson Hutchings, 14 Devon Square, Newton Abbott, Devon, TQ12 2HR, solicitor, do pay a fine of £15,000.00, 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 £13,000.00.

**The facts are set out in paragraphs 1 – 18 hereunder**

1. The Respondent, born in 1948, was admitted to the Roll in 1975. His name remains on the Roll.
2. At all material times the Respondent practised in partnership with others under the style of Ford Simey Solicitors of 8 Cathedral Close, Exeter, Devon EX1 1EW. He ceased to be a partner in that firm on 7<sup>th</sup> June 2006.
3. On 26<sup>th</sup> May David Williams, Managing Partner of Ford Simey (“the Firm”) wrote to the Law Society reporting a number of concerns regarding the Respondent. Those concerns had arisen as a result of an internal investigation, following receipt of a letter from Rawlison Butter dated 29<sup>th</sup> March 2006.
4. Initial concerns had been in relation to loans made by the Respondent to a client Mr R and his associated companies. The Respondent had confirmed to Mr Williams that Mr R had not been advised to seek independent legal advice and had not done so. At that time the sum of approximately £400,000 had been outstanding from Mr R and owed to the Respondent. In addition payments had been made from the Firm’s client account to the Respondent’s personal bank account in excess of £120,000. A further matter had come to light involving a loan by the Respondent to another client, Mr W, where again the client had not been advised to seek independent advice. This matter had been raised by the Firm’s reporting auditors.
5. The Firm had provided further documentary evidence including handwritten notes by the Respondent and copy ledgers and reconciliations. In addition they had commissioned a report into transactions conducted by the Respondent by PKF, which was forwarded to the Law Society under cover of a letter from Geoffrey Williams QC dated 17<sup>th</sup> January 2007. The Respondent had a personal matter ledger open through which he had conducted transactions. It had not been possible to say whether the

clients, Mr W and Mr R, had been subject to a shortfall in client funds however in relation to the loan to the son of a staff member this had originally been made out of funds on another matter relating to an entity of Mr R.

6. On 12<sup>th</sup> December 2006 the Law Society had written to the Respondent requesting an explanation. Messrs Beachcroft LLP had responded on behalf of the Respondent by letter of 3<sup>rd</sup> January 2007.
7. The Respondent, through his representatives, had accepted that he “inadvertently acted in breach of principle 15.04” subject to various mitigating factors. In particular he had stated that the clients involved had been experienced businessmen, he had been seeking to help the clients concerned and they had not lost any monies. He had confirmed that the monies had been loaned by him personally or by his mother. He had denied that any monies belonging to other clients had been used to fund loans. He had also confirmed that Mr R had authorised the payments made to him personally. He had apologised for his breaches of the Practice Rules.
8. Further documentary evidence had been sought from the Respondent. Beachcroft LLP wrote further on 12<sup>th</sup> February 2007 providing details of the source of funds loaned to clients and further documents.
9. Following receipt of the caseworker’s report, Mr Williams QC, on behalf of the Firm had submitted further observations. He had pointed out that, by then, 4<sup>th</sup> July 2007, claims had in fact been made in relation to alleged breaches of undertakings by the Respondent.
10. Further observations had been made by Beachcroft LLP on behalf of the Respondent dated 16<sup>th</sup> July 2007. These had included detailed comments on the PKF report and challenges to a number of factual issues.
11. On 31<sup>st</sup> July 2007 an Adjudicator had resolved to refer the conduct of the Respondent to the Tribunal.
12. Meanwhile, following further investigations by the firm, Mr Williams QC, on their behalf, had submitted a report by way of complaint alleging breaches of undertakings by the Respondent. This report had summarised the undertakings given by the Respondent, his involvement in the various transactions and the concerns of the Respondent’s partners. In relation to one matter, OH, the Respondent had failed to register a charge in the sum of £200,000 in favour of S. The loan received by CH Limited (a company of Mr R) had in fact been used for other purposes, including transferring funds to another of Mr R’s Companies, WI Limited, a temporary loan to that company, some stamp duty for an unrelated client, some paid away to other solicitors for a loan to another client and some to a friend in relation to a private purchase in Dubai (some payments had been retrospectively agreed). When OH had been sold the proceeds had been utilised to repay the initial loan and payments made to DS Limited, a defunct company of which Mr R and his wife were formerly directors. No monies had been paid to S. The other undertakings had been related to properties known as the SH and Unit 4 BM.

13. The caseworker had written to the Respondent's representative on 19<sup>th</sup> September 2007 raising the additional matters reported. Those matters related to breaches of undertakings/failures to comply with professional obligations in relation to various property matters, involving Mr R and his associated companies.
14. Mr Williams QC had provided further documentation under cover of his letter dated 3<sup>rd</sup> October 2007.
15. Further communication had taken place from which it had been apparent that efforts were being made to secure the performance of the said undertakings.
16. Beachcroft LLP had provided submissions on behalf of the Respondent by letter of 16<sup>th</sup> November 2007. In essence the Respondent admitted breaches of undertakings and of professional obligations.
17. Further information had been provided by Mr Williams QC by letter of 19<sup>th</sup> November 2007, regarding the up to date position.
18. By delegated authority the further matters had been added to the referral on 4<sup>th</sup> February 2008.

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

19. The Applicant explained that all the allegations had been admitted by the Respondent. Although dishonesty had not been alleged, it was submitted that the misconduct of the Respondent was of an extremely serious nature.
20. The Applicant referred the Tribunal in detail to the key documents including the list of loans, the relevant correspondence and the documentation relating to the various undertakings, including the detailed report of 4<sup>th</sup> June 2007 and the PKF report of December 2006.
21. The Applicant submitted that the Respondent's claim that he had been dealing with experienced businessmen did not assist him in relation to the particular allegations. The Respondent's breaches of undertakings had led to losses for clients and to claims against the Firm. The Applicant noted that there had been some retrospective authorities relating to loans but she submitted that these had not lessened the seriousness of the matter or the fact of the breaches of the Solicitors' Accounts Rules.

#### **The Submissions on behalf of the Respondent**

22. Mr Nelson reminded the Tribunal that there was no allegation of dishonesty against the Respondent. He stressed that the Respondent had been foolish rather than wicked and that he was the key loser in the transactions.
23. Mr Nelson explained that the Respondent had acted for Mr R on a large number of transactions, sometimes as many as 10 at any one time. The Respondent had become too close to his client. Being a helpful and generous man, he had believed that he had been creating opportunities for his client, Mr R, to borrow monies at a lower rate and for others to lend at a higher rate. In the early stages, loans had been made by

individual clients with full knowledge and consent. These loans had been repaid, leading the Respondent to lend further monies raised by way of a mortgage on his own property.

24. In relation to the loan of £18,000 to SW, there had been a lack of documentation and it was retrospective evidence rather than retrospective permission that had been subsequently obtained.
25. The Respondent had introduced Mr W to the money lending scheme and his loans had been repaid. However, the Respondent and his family had lost over £500,000.
26. The Respondent had been naive and had failed to take security. The schedules that he provided and which were before the Tribunal had set out the details of the use of the monies. For example, work done to the Respondent's house.

### **The Oral Evidence of the Respondent**

27. The Respondent gave evidence on Oath. He stressed that loans were never made without the consent of the relevant client. He gave explanations relating to loans A-H as detailed in the PKF report. The Respondent stressed that he had not been involved in the preparation of that report. He explained in detail which monies he had believed he was utilising at the material times in each of the various transactions.
28. The Respondent explained that he had told Mr W to seek independent advice but that he had failed to do so. The Respondent had lent his own and his family's monies to Mr R's companies but there had been no separate advice taken.
29. In response to a question from the Tribunal, the Respondent said that while he was aware that Mr R had many companies, he was not in contact with him and therefore did not know the current financial position of those companies.
30. In cross examination, the Respondent confirmed that the individual companies linked to Mr R had not been advised to take independent advice although he believed that he might have advised Mr W to take such advice on one occasion.
31. The Respondent accepted that some of his ledger transfers had involved substantial breaches of the Solicitors' Accounts Rules but he insisted that he had had telephone authorities. He acknowledged that he had not fully considered the implications of his actions in relation to the Solicitors' Accounts Rules and that he had been jumbling up his monies. He confirmed that he had personally repaid the loan of £18,000.00.

### **Further Submissions on behalf of the Respondent**

32. Mr Nelson referred to the PKF report that was before the Tribunal. He explained that it had been commissioned by the other partners in the firm to show why they should not also be facing disciplinary proceedings. PKF had been instructed to consider whether the issues and subsequent breaches of the Solicitors' Accounts Rules arising from the actions of the Respondent should, or could, have been identified in the normal course of business by the remaining partners or by the firm's procedures

relating to transactions concerning client money. There had been no input into the report by the Respondent.

33. Mr Nelson stressed that the Respondent was not a dishonest man but that he had been naive. He had been dealing with people well versed in the conduct of business. The Respondent's client, Mr R, had taken financial advantage of the Respondent. Mr Nelson stressed that it was not a case where the Respondent had been dealing with vulnerable clients. It was the case of a solicitor who had been too close to his clients and who had foolishly blurred his objectives.
34. Mr Nelson explained that the breaches of undertakings in 2004 had been totally out of character for the Respondent. They had been oversights. At all times, the Respondent had believed that he was acting in the best interests of his clients. Until these matters, the Respondent had had an unblemished record and had been held in high esteem by his peers. A heavy emotional and financial toll had been exacted by these matters. The Respondent had been foolish and misguided but not wicked.
35. Mr Nelson explained that the Respondent had offered to make the necessary repayments and to a large extent had funded the key reports of Mr Williams QC and of PKF. The Respondent had not attempted to hide any of the material transactions. Both Mr R and Mr W had been fully aware of what was taking place. It had been the Respondent's failure to document the agreements and the individual transactions that had caused confusion.
36. Mr Nelson referred to the references in support of the Respondent that were before the Tribunal. Colleagues had spoken of the Respondent in warm and praiseworthy tones. He explained that at 60, the Respondent remained keen to continue to practice and called Peter James Boyne, a partner in the firm of Kitson Hutchings, presently employing the Respondent.

### **Oral Evidence on behalf of the Respondent**

37. Peter James Boyne gave evidence on Oath. He explained that he was a partner and head of the commercial department in Kitson Hutchings. He had known the Respondent both professionally and as a friend some 20 years. Mr Boyne had been aware of the Respondent's difficulties in general terms and had arranged for his partners to interview him with a view to employment. Mr Boyne hoped that the Respondent would be able to continue his employment with the firm. He said that the Respondent always acted in the best interests of his clients who were very satisfied with his work which covered a wide range of general commercial work.

### **The Decision of the Tribunal**

38. Having considered all the evidence and the helpful submissions and explanations from the Applicant and on behalf of the Respondent together with the Respondent's submissions, the Tribunal noted that the admitted allegations were extremely serious. Over a period of some years the Respondent had been involved in transactions with clients in which he had been a lender to them and in which, in some cases, he had taken security from them. The Tribunal was satisfied that the Respondent had acted in clear breach of the fundamental provisions of Principle 15.04 and that he should

have refused to act in circumstances in which the client had not taken independent legal advice. The Tribunal noted that had the Respondent complied with the Principle his subsequent problems, both regulatory and financial, would not have arisen.

39. The breaches of the Solicitors' Accounts Rules were also serious. However, the Tribunal considered the Respondent's failures to honour his undertakings as particularly serious. This was because such failures both undermined the reputation of the profession and the viability of the conveyancing system which depends on reliance being placed on such undertakings.
40. Dishonesty had not been alleged against the Respondent but to mark the seriousness of the admitted allegations the Tribunal Ordered the Respondent to pay a penalty of £15,000 together with agreed costs of £13,000. The Tribunal, noting both the naivety which has in part led to the admitted breaches and the testimonials from his current employer who wished such employment to continue, also recommended that the Respondent should only act as a solicitor in employment which was approved by the Law Society and which offered, in the reasonable opinion of the Law Society, appropriate supervision and where the Respondent was not, nor held out to be, a partner, nor should he be an office holder or shareholder in any incorporated solicitors' practice and further that he should not be a training principal.

Dated this 30<sup>th</sup> day of November 2009

On behalf of the Tribunal

A G Ground  
Chairman