

IN THE MATTER OF IAN DAVID BURTON-BADDELEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr E Richards
Mr M G Taylor CBE DL

Date of Hearing: 4th February 2010

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 Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors of Bradley Court, Park Place, Cardiff, CF10 3DP on 20th April 2009 that Ian David Burton-Baddeley, solicitor of Burtfield House, 39-41 Wilson Pattern Street, Warrington, Cheshire, WA1 1PG 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 that:

1. He failed to maintain properly written up books of account contrary to Rule 32 of the Solicitors Accounts Rules 1998.
2. He had transferred money out of client account when he was not authorised to do so in breach of Rule 15 of the Solicitors Accounts Rules 1998.
3. In respect of monies received in full or part settlement of a bill rendered by the Respondent firm, the Respondent failed to comply with the provisions, and is thereby in breach of Rule 19 of the Solicitors Accounts Rules 1998.

4. In receiving payments comprising of both client money as well as office money, the Respondent failed to adhere to and is in breach of the provisions of Rule 20 of the Solicitors Accounts Rules 1998.
5. He permitted funds to be drawn from client account otherwise than in accordance with Rule 22(1) of the Solicitors Accounts Rules 1998 leading to a cash shortage.
6. As a principal in his firm, the Respondent failed to: inform clients of commission received over the prescribed amount; pay to the clients the amount of commission received; or sought the consent of the clients for the Respondent's firm to keep the commission payments; such failures amounting to a breach of Rule 2.06 of the Solicitors Code of Conduct 2007 leading to the generation of an undisclosed profit.
7. He conduct himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors Practice Rules 1990 and/or, where such conduct related to a period after 1st July 2007, Rule 1.03 of the Solicitors Code of Conduct 2007.
8. He conducted himself in a manner which was likely to compromise or impair his duty to act in the best interests of his clients contrary to Rule 1(c) of the Solicitors Practice Rules 1990 and/or, where such conduct relates to a period after 1st July 2007, Rule 1.04 of the Solicitors Code of Conduct 2007.
9. He conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990 and/or where such conduct relates to a period after 1st July 2007, Rule 1.06 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 4th February 2010 when Michael Robin Havard appeared on behalf of the Applicant and the Respondent appeared and was represented by Mr Andrew Blatt of Murdochs Solicitors, 45 High Street, Wanstead, London, E11 2AA.

The evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant with accompanying bundle which included a Forensic Investigation Report dated 30th June 2008, and the admissions, denials, submissions and statement in mitigation of the Applicant.

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

The Tribunal Orders that the Respondent, Ian David Burton-Baddeley of Burtfield House, 39-41 Wilson Patten Street, Warrington, Cheshire, WA1 1PG, solicitor, do pay a fine of £12,500.00, 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 £16,932.88.

The facts are set out in paragraphs 1-45 hereunder:

1. The Respondent, Ian David Burton-Baddeley, born in 1955, was admitted to the Roll of Solicitors in 1980. At all material times, the Respondent practised on his own

account under the style of Longlands Solicitors at Burtfield House, 39-41 Wilson Patten Street, Warrington, Cheshire, WA1 1PG.

2. Having obtained authorisation on 20th February 2008 and at various dates thereafter, Mr Gordon Hair, a Forensic Investigation Officer ("FIO") of the SRA, attended the offices of the Respondent's firm in order to carry out an investigation. A Forensic Investigation Report ("FIR") dated 30th June 2008 was produced as a result of the investigation.

Allegation 1 (Books of Account)

3. The books of account were not in compliance with the Solicitors Accounts Rules for the following reasons:
 - (i) monies had been incorrectly held in office bank account in respect of unpaid professional disbursements;
 - (ii) monies had been incorrectly transferred from client to office bank account in respect of aged client ledger balances where the client had received no prior written notification;
 - (iii) monies had been incorrectly held in office bank account in respect of commissions received for which clients had not given prior authority for commissions to be retained by the firm;
 - (iv) client bank account had not been reconciled with the required frequency, the month of August 2007 was reconciled on 8th October 2007 and the five month period to 31st January 2008 was reconciled on 21st February 2008.

Allegations 2-5, 7, 8 and 9 (cash shortage)

4. The FIO identified a minimum cash shortage of £21,152.94. The minimum cash shortage arose as follows:

Cause of the minimum cash shortage - £21,152.94

5. The minimum cash shortage arose as follows:

(i) Monies in respect of unpaid professional disbursements lodged and retained in office bank account	£14,492.45
(ii) Monies transferred from client to office bank account in respect of which the client had received no prior written notification	1,326.66
(iii) Monies retained in office bank account in respect of commissions earned from a medical report agency where the client had received no disclosure and the client had not agreed to the amounts being retained	550.00

(iv) Book difference	3,810.83
(v) Reconciliation shortage	<u>973.00</u>
	<u>£21,152.94</u>

Monies in respect of unpaid professional disbursements lodged and retained in office bank account - £14,492.45

6. At 31st January 2008 the balance on the unpaid disbursements' ledger was £20,370 which comprised 26 individual balances ranging in value from £12 to £1,759.63. The FIO reviewed a sample of clients' ledgers in respect of these balances and established that on 18 clients' ledgers amounts had been incorrectly lodged and retained in office bank account in respect of unpaid professional disbursements in the sum of £14,492.45.

Miss PT

7. It was discovered that, on 11th December 2007, the sum of £11,389.63, representing costs of £9,000 and disbursements of £2,389.63 was paid into the office bank account.
8. Four months later, unpaid disbursements, to include Counsel's fees and a fee for a medical report, were paid out of monies held on office account.

Mr LG

9. On 10th August 2007 the sum of £13,620.30 was paid into client account and on 13th August 2007 the sum of £9,183.30 was transferred to office account, such sum to include amounts in respect of unpaid professional disbursements.
10. Some seven months later, the Respondent took steps to pay the disbursements to include Counsel's fees and the fee of the medical report.
11. By letter of 30th April 2008 the Respondent confirmed that in the future he would pay settlement cheques directly to client bank account.

Monies transferred from client to office bank account in respect of which the client received no prior written notification - £1,326.66

12. There were four client matters on which it was discovered that transfers of monies from client to office bank account had been made on a number of matters a significant time after completion and which reduced the client ledger balance to zero.

Client name	Matter Type	Completion	Date of last transaction	Client to Office transfer	Cash shortage
Mr S	Conveyance	22.06.01	08.03.06	£290.78	£290.89
Ms J	Accident	02.12.02	17.11.05	208.50	208.50
Mr A	Conveyance	11.05.01	08.03.06	232.00	232.00
Ms C	Accident	15.09.03	30.08.05	111.63	111.63

Mr SB

13. At a time when Mr HD was working at the Respondent's firm, he acted for Mr SB in the sale of his property which completed on 22nd June 2001.
14. As a result of difficulties in the transaction, at the time of completion, no costs were raised in respect of the transaction. Indeed, the client requested compensation which was refused.
15. Whilst in a draft letter of 24th September 2001, reference was made to the client having been paid £269.28 by way of interest accrued whilst monies were held on client account, there is no evidence that such money had been paid to the client.
16. On 24th September 2001 the client ledger records the transfer of interest of £269.28 from office to client bank account. There were certain other payments identified on the client ledger which led to a balance of £290.28 being owed to the client to include the £269.28 in respect of interest.
17. On 4th March 2005, a file note was sent by the fee earner to the bookkeeper indicating that the amount of interest should be sent to the client.
18. A year later on 7th March 2006 a bill of costs with the Respondent quoted as fee earner, was raised for £290.78 inclusive of VAT.
19. It was accepted by the Respondent that he should have notified the client of his intentions with regard to the monies held. However, by a letter of 22nd February 2008, which is two days after the first visit the FIO to the Respondent's office, the Respondent sent a letter to the client to indicate that he had taken the monies from client account representing accrued interest and utilised it for payment of fees. Whilst the Respondent stated in his letter "at the time I did say to the relevant fee earner that I would not waive the firm's fees", this had not been communicated to the client who without any notice or warning, received a bill of costs. Without any authority, the Respondent used the accrued interest to pay the bill.

Ms JJ

20. The Respondent acted for Ms JJ in an unsuccessful claim for damages arising out of a road traffic accident. On 6th September 2002, the Respondent's firm received the sum of £258.50 into client account. It was described as a disbursement in the client ledger. This sum was received from First National Litigation Funding plc and the Respondent indicated that it represented the fee payable to the Claims Managers, Fast Track Indemnity Limited, which was a company in liquidation. A further sum of £235 would be paid to the firm in respect of its costs but there is no evidence of that sum being received.
21. On 14th May 2003 the firm raised a bill for £235 but this was not recorded on the office side of the client ledger nor was there any evidence on the client file that costs had been claimed from the insurers.

22. Consequently, despite the fact that it was described as a disbursement and despite the fact that ordinarily such sum would have been paid to Fast Track Indemnity Limited, a company in liquidation, the Respondent took the sum of £258.50 as the firm's costs of £208.50 plus £50 in respect of the cost of a police accident report.

Mr AP

23. The client ledger in relation to this transaction illustrated that, whilst a bill was rendered at the completion of the transaction in May 2001, there was a balance outstanding of £232.
24. Despite the fee earner involved, Mr DR, writing to the client on 27th May 2005 saying "call me and hopefully we can decide to whom I should pay the sum of £232", on 7th March 2006, some ten months later, and just under five years after completion, the Respondent raised an additional bill.
25. Once this had been detected by the FIO and brought to the Respondent's attention, the Respondent repaid the sum to the client by letter of 22nd February 2008.

Mrs CJD

26. Following representation of Ms CJD in a personal injury matter, the client ledger was credited on 15th September 2003 with receipt of profit costs and disbursements in the sum of £5,250.
27. Whilst there was a letter dated 14th November 2003 purporting to forward a cheque for £111.63 by way of payment of Counsel's fees, the FIO could find no evidence that a cheque for this sum had been raised or presented.
28. On 30th August 2005, approximately 21½ months later, the sum of £111.63 was transferred from client to office bank account and a bill for that amount was subsequently raised, dated 1st November 2005 and signed by the Respondent.
29. The Respondent stated that he would make enquiries with Counsel's Chambers but, in his letter of 30th April 2008 the Respondent said that enquiries had been unsuccessful. The Respondent then assumed that he must have miscalculated the original profit cost element and therefore considered that he was entitled to take the money as costs of the firm.

Allegations 6-9 (monies retained in office bank account in respect of commissions)

30. The Respondent entered an arrangement with an agency, SKM, for SKM to provide medical reports in respect of the Respondent's personal injury clients. For each case sent to it, SKM would pay the Respondent's firm the sum of £50 ordinarily by the Respondent's firm deducting that sum from the figure quoted as the fee payable to SKM.
31. The Respondent incurred the fee for the medical report on behalf of the client. It was a disbursement, the full amount being covered, where possible, from the defendant's

insurers at the conclusion of the claim albeit the retainer was between the Respondent's firm and the client.

32. As at the time of the preparation of the FIR a copy of the agreement between the Respondent's firm and SKM, which the Respondent stated existed, was not forthcoming.
33. Despite a request from the FIO, the Respondent was not able to provide details of the total commission payable to the firm in the accounting period during which the FIO's investigation took place, and in the previous 12 months.
34. In the case of a client, Mr S, a former employee of the Respondent, wrote to SKM on 18th December 2006 stating "I look forward to sending you lots of instruction letters in 2007".
35. From the review of a number of client ledgers, the FIO was able to establish that the deduction of £50 in respect of the commission occurred on eleven client matters leading to a total of £550.
36. Despite the Respondent saying that £50 could not be described as a commission, a letter of 11th October 2007 from the Respondent to SKM and a bill dated 12th October 2007 both clearly described the payment to SKM as a commission.
37. There is no evidence to suggest that the payment of commission was ever canvassed with the Respondent's clients to determine whether they would wish to take advantage of the payment of commission or seek their consent to the Respondent's firm keeping the commission.

Allegations 1 and 5 (book difference - £3,810.83)

38. The Respondent failed to carry out bank reconciliations in accordance with Rule 32(7) of SAR.
39. Once the reconciliation had been undertaken for the five month period from 1st September 2007 to 31st January 2008, it revealed a potential book difference of £4,137.67 which, on further analysis, was reduced to £3,810.83. The cash shortage identified was rectified by the Respondent paying that sum into client bank account on 3rd May 2008.

Allegations 1 and 5 (shortage on reconciliation - £973)

40. The reconciliation performed on 21st February 2008 revealed a shortage of £973 but it was confirmed by the Respondent in a note of 27th February 2008 that this sum would be transferred from office to client bank account to rectify the shortage.

Allegations 2-5 and 7-9: (client files which could not be located)

41. 11 of the 22 client files requested by the FIO to be produced for examination could not be located.

42. However, from an inspection of the client ledgers it was possible to identify a number of matters where credit balances existing on client account many years after the last activity on, or completion of, the matter were simply transferred from client to office account and a bill raised.

Client name	Matter Type	Completion	Last transactions	Transfer Client to Office	Bill raised	Amount of bill
E	Probate	08.08.97	02.07.07	£689.98	02.07.07	£689.98
K	Deposit		17.12.03	649.19	16.12.03	649.19
R	Conveyance	01.07.97	08.03.06	287.97	08.03.06	287.97
E	Probate	27.02.97	08.03.06	214.86	08.03.06	214.86
T	Probate	14.02.02	04.10.07	146.31	04.10.07	146.31

43. By a letter of 23rd July 2008 the SRA wrote to the Respondent enclosing the FIR inviting him to respond to the issues raised.
44. Having obtained an extension of time in which to do so, the solicitor instructed by the Respondent responded by letter of 8th September 2008.
45. By a decision of 28th October 2008 the Respondent was referred to the Tribunal.

The submissions of the Applicant

46. The Applicant told the Tribunal that all of the allegations were admitted by the Respondent. No dishonesty was alleged.
47. In respect of the monies transferred from client to office bank account for which the client had received no prior written notification, the Applicant submitted as follows:
- (i) on each occasion, the Respondent took the money as costs when he knew, or should have known, that he was not entitled to do so;
 - (ii) on two occasions he did so despite clear evidence on the file that other fee earners had addressed their minds to the proper destination of the outstanding balances;
 - (iii) the Respondent took the money as costs without notifying the client beforehand of his intention to do so;
 - (iv) the Respondent took the money as costs when there was no evidence that he had undertaken any work to justify such costs;
 - (v) the Respondent had allowed these balances to remain on the account for many months and failed to take any action in respect of them until after the commencement of the investigation by the FIO;
 - (vi) it was only as a result of the investigation that, in certain cases, the improper actions of the Respondent were rectified;

- (vii) on certain occasions, despite the improper actions on the part of the Respondent being brought to his attention, he still did not remedy the position.
48. A feature of this case was that, at an individual level, sums were not large. The issues arose from the conduct of the Respondent and that, cumulatively, the sums involved were not insignificant.
49. The Applicant said that it was clear from looking at certain paragraphs of the Respondent's statement in mitigation, which was before the Tribunal, that his explanation was a grudging acceptance, which showed little insight or remorse for his actions. Whilst the Applicant was sympathetic to the Respondent's situation around the time that the allegations had arisen, he asked the Tribunal to consider the extent to which the matters he had put forward were a proper explanation of what had occurred.
50. In regard to the commission payments, the Applicant pointed out that these were actually called "commission" on the supporting documentation and that therefore the Respondent was fully aware that commission was indeed being charged.
51. The Applicant sought costs in the sum of £16,932.88.

The submissions of the Respondent

52. The Respondent accepted all of the allegations but asked the Tribunal to note that no allegation of dishonesty had been made. In mitigating he did not seek to belittle or excuse the seriousness of the allegations. However, he did observe that there was a significant duplication and overlap of offences. It was clear that, in each category, the action that the Respondent had taken was wrong and that he had fallen temporarily below the standard required of a solicitor.
53. The shortage on client bank account had occurred because of mistakes both by the Respondent and the bookkeeper that he had employed between July 2006 and August 2007, who had not had sufficient expertise to operate the accounts system in a proper manner. This was despite the fact that the bookkeeper in question had had significant accounts experience in large companies and had been sent on a refresher course in solicitors' accounts by the Respondent. It was important to note that there had been no misappropriation or theft.
54. It was in 2007 that the bookkeeper's performance first raised concerns and the then accountants, Baker Tilly, discovered that reconciliations were not being conducted properly. A qualified s.34 report was filed by Baker Tilly and, although the Respondent had not reported this matter, it had been picked up by the SRA which had caused the forensic investigation. It was therefore not true to say that it was the discovery by the FIO that had caused him to take action. The Respondent had felt that he was entitled to rely upon the apparent expertise of the bookkeeper.
55. There had been a previous forensic investigation in 2003, which did not raise any significant concerns, and a PSU visit in 2005 in which it had been noted "It is quite apparent that Longlands have a strong client service ethic". It was submitted on behalf of the Respondent that the PSU report read as a whole demonstrated a well run practise with minor observations as to breaches. The concerns over reconciliations really only became an issue after the employment of the bookkeeper in question.

56. Once the errors in the accounts had become apparent, the Respondent had spent over £10,000 on accountants to check and rectify the position. It was submitted on behalf of the Respondent that no client had ultimately lost money and that he had learnt a costly lesson. However he did take full responsibility for both his inactions and those of the bookkeeper.
57. At the time the Respondent had not appreciated the diligence required when looking at balances on client account. His recollection in the case of Mr SB was that a bill should have been raised by Mr HD in 2001 but it was not and there were moneys properly due to the firm. He did however accept that what had occurred was not the right way to do it. In the case of JJ, he believed that the ledger was wrong and made attempts to discover what the balance represented. He again accepted that it was wrong to transfer the moneys. Mr AA had not been his client and he accepted that a mistake had been made. In the case of Ms CD he had failed to consider the ledger and believed the moneys properly represented fees. He had attempted to make enquiries with Counsel which had not proved successful. In regard to the transfers on files which were identified as 'missing', his deceased partner, Mr Stansfield had kept files at home and the Respondent had just looked at the ledgers and reached a conclusion. He now accepted that moneys should not have been taken.
58. In regard to the commission payments, the Respondent had not notified clients and had not realised he had to, as he thought that these were not payments of commission, however he now accepted that they were. In any event no commissions were now received nor were any referral fees paid.
59. The Respondent had now scaled down the practice of Longlands and he was now the sole proprietor and principal. In contrast to the periods where the breaches occurred, there was now just the Respondent and two staff as well as his wife who worked in the business. The Respondent was the sole fee earner and undertook a limited range of services, including wills and probate, some commercial work and a limited number of private personal injury cases. Pinpoint (Quill), a third party accounts provider, now prepared his books of account.
60. In summary the Respondent now recognised that he had been careless as regard procedures and supervision. He had in every case repaid monies on each and every breach or where the client could not be found had made an application to the SRA to pay the monies to charity.

The Findings of the Tribunal

61. The Tribunal found all of the allegations proved, indeed they had not been contested.
62. The Tribunal had studied all of the documentation put before it most carefully and had taken into account the submissions of both the Applicant and Respondent.
63. The Tribunal found that the Applicant had been irresponsible and had, in many cases, taken the lazy option as he did not need the money that was involved. Once he had realised that there were balances on client account he should have returned these monies to the clients and not raised bills and taken costs. Since then he had employed

a well qualified bookkeeper whom he had sent on an appropriate course and had now dealt with returning the monies to the clients. In addition, he had set up an accounting system that meant he was unlikely to find himself in the same difficulties again.

64. The Tribunal found these to be serious allegations but, in view of the mitigation put forward on the part of the Respondent, and the fact that the practice was now run along better lines, coupled with the steps that the SRA had taken to protect the public, a fine would be appropriate in this case. However were the Respondent to find himself before the Tribunal in the future then he would be in very serious difficulties.
65. The Tribunal Ordered that the Respondent, Ian David Burton-Baddeley of Burtfield House, 39-41 Wilson Patten Street, Warrington, Cheshire, WA1 1PG, solicitor, do pay a fine of £12,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,932.88.

Dated this 7th day of May 2010

On behalf of the Tribunal

Mrs J Martineau
Chairman