

IN THE MATTER OF ANTHONY DAVID DAVIS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. E. Richards (in the chair)  
Miss N. Lucking  
Mr. M. G. Taylor CBE DL

Date of Hearing: 17th November 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 by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 7<sup>th</sup> May 2009 that Anthony David Davis, a solicitor of Davis & Co, 3 Victoria Mews, De Montfort Place, Leicester LE1 7GZ 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 Anthony David Davis were that:-

1. He failed to keep his books of accounts properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998.
2. He withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998.
3. He failed to remedy breaches of the Solicitors Accounts Rules 1998 promptly upon discovery contrary to Rule 7 of the Rules.

4. He failed to provide clients with full and adequate information about costs and other matters at the commencement of a retainer contrary to Rule 15 of the Solicitors Practice Rules 1990.
5. He acted in a manner likely to compromise or impair his independence or integrity and to damage the good repute of himself and/or the solicitors profession contrary to Rule 1 (a) and (d) of the Solicitors Practice Rules 1990 and Principle 17.01 of the Guide to the Professional Conduct of Solicitors.
6. He failed to act towards the Solicitors Regulation Authority in an open, prompt and cooperative way, contrary to Rule 20.03 of the Solicitors Code of Conduct 2007.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17<sup>th</sup> November 2009 when Stephen John Battersby appeared as the Applicant and the Respondent appeared and was not represented.

The evidence before the Tribunal included the Rule 5 statement of the Applicant, together with accompanying bundle which included a Forensic Investigation Report of the SRA dated 3<sup>rd</sup> January 2008, the partial admissions of the Respondent, medical evidence on behalf of the Respondent and the sworn oral evidence of the Respondent.

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

The Tribunal Orders that the respondent, Anthony David Davis of Davis and Co, 3 Victoria Mews, De Montford Place, Leicester, LE1 7GZ, solicitor, do pay a fine of £5,000, 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 £10,000.

**The facts are set out in paragraphs 1 – 13 hereunder:**

1. The respondent, who was born in June 1943, was admitted as a solicitor in July 1980. At the times material to the allegations he practised on his own account as Davis & Co at 3 Victoria Mews, De Montford Place, Leicester LE1 7GZ. His name still appears on the Roll of Solicitors.
2. On 8<sup>th</sup> October 2007 by prior arrangement, an Investigation Officer (“IO”) of the Solicitors Regulation Authority, Mr J E Carruthers commenced an inspection of the books of account and other documents of the Respondent at his office address. His report is dated 3<sup>rd</sup> January 2008.

Allegation 1

3. Mr Carruthers found that the books of account had not been kept properly written up and noted the following deficiencies:-
  - (a) No matter details were recorded on any of the clients’ ledger accounts.
  - (b) Funds belonging to Mortgagee clients were not clearly identifiable when the same ledger account was used when acting for both lender and borrower.

- (c) Clients' ledger accounts were not kept to record amounts held on separate designated client accounts.
- (d) Amounts held in separate designated client accounts were not included in the client account reconciliations.
- (e) Dealings in the monies of one client were recorded on the client ledger account of another.
- (f) No client ledger accounts were produced in respect of three separate clients.
- (g) Dealings with office money relating to client matters were not recorded on the office side of the relevant client ledger account, but on ledger accounts maintained by Mr B, offsite, on a separate accounting system.
- (h) In two matters no office ledger accounts had been opened to record office account dealings relating to client matters and on two further matters such transactions had not been posted to the relevant office ledger accounts.

#### Allegation 2

- 4. It was noted that the liabilities to clients totalled £18,454.80, whereas the cash available to meet them was only £16,476.92 thus producing a shortage of £1,977.88. Part of this shortage had been caused by the Respondent's bank making a transfer from client account to his own personal account in the sum of £1,021 on 5<sup>th</sup> July 2007. The remainder was due to debit balances totalling £916.88 and an unidentified payment of £40.
- 5. The amount of £916.88 was made up of seven debit balances caused by a combination of over payments and over transfers. The largest one related to a payment made from client account in respect of a client Mr G on 25<sup>th</sup> June 2007. Payment of the amount due for work done for the client had been made by HMCS from Central Funds on 7<sup>th</sup> June 2007.
- 6. In the eleven months preceding the inspection there had been a further 18 debit balances recorded which had been rectified prior to the inspection.

#### Allegation 3

- 7. Mr Carruthers found that some of the shortages had not been replaced immediately upon discovery:-
  - (a) The payment of £1,021 made by the bank on 5<sup>th</sup> July 2007 had not been replaced until 12<sup>th</sup> October 2007. It had been noted on the client account reconciliation of 31<sup>st</sup> August 2007 with a narrative 'paid by bank into ADD Private Account – to be repaid'.
  - (b) The rest of the cash shortage, totalling £956.88, had arisen in early July 2007 and the Respondent had been made aware of it during an inspection in October 2007. It was not replaced until 18<sup>th</sup> February 2008.

- (c) A number of the cash shortages which had been replaced prior to the inspection had been in existence for several months before being replaced.

#### Allegation 4

8. The Respondent had been the subject of a visit by the Practice Standards Unit on 21<sup>st</sup> and 22<sup>nd</sup> March 2006 which was followed by a report which was sent to him. One of the matters drawn to his attention was a lack of client care letters on certain files and he was asked to ensure that in future such letters were provided on all matters as soon as he had received instructions to act. In five of the eight client matters files which Mr Carruthers examined during the inspection he was unable to find client care letters.

#### Allegation 5

9. Mr R was, or had been, a client of the Respondent. On 17<sup>th</sup> February 2006 an amount of £20,000 was lodged in the Respondent's office account and nominated to a nominal ledger account titled 'loan-GR'. The Respondent subsequently sent the SRA copies of four cheques issued on the business account of Mr R's wife each dated 8<sup>th</sup> February 2006 and each in sum of £5,000. The Respondent explained that Mr R, a client who had become a friend, had offered to give him £20,000 as an investment in his business or, alternatively, as a gift. The condition agreed between Mr R and the Respondent was that Mr R's wife was to be employed as the Respondent's office manager, but she had proved not to have the capacity for the job and had left ten days after starting. The Respondent went on to explain that the relationship between him and Mr R had broken down as a result of various matters. The funds still remained in the Respondent's account at the time of the inspection and there were no written terms and conditions relating to the transaction.

#### Allegation 6

10. During the course of the inspection Mr Carruthers asked the Respondent to provide information and documents which would have assisted him.
- (a) Mr Carruthers had noted the existence of three designated bank accounts held with HSBC. He asked the Respondent to obtain up to date balances in respect of these accounts, but he failed to do so by 26<sup>th</sup> October 2007, the date of the final meeting with Mr Carruthers. On that date he said that he would send the information to Mr Carruthers, but at the date of the report, 3<sup>rd</sup> January 2008 it had still not been received. It was provided by the Respondent under cover of his letter to the SRA of 22<sup>nd</sup> February 2008.
- (b) With regard to the transfer of £1,021 made by the bank on 5<sup>th</sup> July 2007, the Respondent delayed in providing evidence that the matter had been rectified and that the bank had apologised to him for the error. The Respondent had been asked to provide this information during the inspection but had in fact provided it under cover of the letter of 22<sup>nd</sup> February 2008.

11. On 4<sup>th</sup> February 2008 the SRA wrote to the Respondent seeking his explanation for the matters revealed in the report. He responded on 22<sup>nd</sup> February 2008 attaching supporting documents. He explained that in August 2007, the member of staff responsible for maintaining the books of account of the firm had left, thus resulting in delays in fulfilling his responsibilities under the Solicitors Accounts Rules 1998. It was only as a result of the inspection that he had become aware of the breaches identified but he had appointed a new member of staff and put systems in place to ensure that the Rules were complied with in future. He produced evidence to show that the three designated accounts had been closed by the date of the inspection.
12. The Respondent explained the sum of £20,000 from Mrs R by saying that Mrs R, in consideration of him employing her, had provided him with the four cheques, each of £5,000 to invest in his practice. As she was a friend rather than a client, he did not advise her to seek independent legal advice. He confirmed that there was nothing in writing relating to the agreement.
13. On 12<sup>th</sup> December 2008 an Adjudicator resolved to refer the conduct of the Respondent to the Tribunal.

#### **The submissions of the Applicant**

14. The Applicant indicated that the Respondent admitted allegations 1-4 and denied allegations 5 and 6. The Respondent admitted allegations 1 – 3 on the basis that he was the sole principal of the firm and had placed heavy reliance on his bookkeeper. Dishonesty was not alleged against the Respondent.
15. In relation to allegation 2 it was accepted by the Applicant that the bank transfer of £1,021 on 5<sup>th</sup> July 2007 had been made by the bank without the Respondent's knowledge or his consent. If the Respondent had provided evidence of this matter having been corrected then it would not have appeared as part of the allegations.
16. In relation to allegation 5, the Respondent said that this was not a loan. However the Applicant's position was that there should have been something in writing concerning this particular transaction. Since there was not the Applicant said that the Respondent's conduct was caught by Rule 1 (a) and (d) of the Solicitors Practice Rules 1990 and Principle 17.01 of the Guide to Professional Conduct of Solicitors. Even though Mrs R was not a client, her husband was or had been and the Respondent's actions in accepting a loan of this sort without any written agreement associated with it was likely to compromise or impair his independence or integrity and also his good repute and/or that of the profession. The Applicant also suggested that the Respondent may have used his position as a solicitor to take unfair advantage of Mr and Mrs R.
17. In the Applicant's submissions the Respondent could and have provided the banking information to the SRA in a timely manner. By not doing so he was in breach of Rule 20.03. It would not only have assisted the Authority but the Respondent would also have benefitted.

### **The sworn oral evidence and submissions of the Respondent**

18. The Respondent indicated that he no longer banked with the bank responsible for the improper transfer. He had immediately telephoned that bank when he had found out about the transfer and explained that they could not transfer monies from client account to his own personal account and the matter had been immediately reversed. He took the requirement to provide information to the Forensic Investigation Officer very seriously and told the bank he needed the information concerning the transfers as soon as possible but they would not provide it to him.
19. In regard to allegation 6 the Respondent said that he had indeed received letters from the bank dated 10<sup>th</sup> and 19<sup>th</sup> October 2007 dealing with his complaint about the transfer of £1,021 and apologising for the bank's error. The only reason that these had not been provided to the SRA was that he had had a serious problem with his eyesight and his health. He did however agree on questioning from the Chairman that the bank had not produced balances for him on request.
20. In relation to allegation 5 the Respondent said that Mrs R was not a client and that the £20,000 had come from her. Her husband Mr R was in endless litigation and made sure that he had no assets. Mrs R had given him the £20,000 so that she could become his practice manager but had walked out after a very short period of time. It was she who had signed the cheques. The Respondent was now in disagreement with Mr and Mrs R as he had travelled to Poland on their behalf and paid all his expenses and received nothing back. He had also paid Mr and Mrs R £10,000 for an extension on his house which was not finished and would cost £36,000 to rectify. He had now paid some £2,000 of the £20,000 back to Mr and Mrs R but it was his position that Mr and Mrs R had had more than enough money from him.
20. On questioning from the Chairman as to why the monies had not been returned, the Respondent said that the status of the £20,000 had never been stipulated. It was Mr and Mrs R who had made the suggestion that Mrs R become the practice manager and that they give the Respondent £20,000 and he had not encouraged them. As Mrs R was not a client he did not believe that this money or the status of it was any concern of the SRA and he was puzzled as to how he had brought the profession into disrepute by accepting it. However he now realised that he should not have accepted it because it had caused more trouble than it was worth and his position was that he had been naive in dealing with Mr and Mrs R; the £20,000 had helped the practice but it would have survived without it.

### **The decision of the Tribunal**

21. The Tribunal found all of the allegations against the Respondent to have been proved. In relation to allegations 1-4 these had been admitted. Allegation 5 the Tribunal had considered most carefully the appropriate Rule and Principles and had concluded that the Respondent should have set-up a formal agreement in these particular circumstances. In not doing so and dealing with the spouse of a client in this manner had breached Rule 1 (a) and (d) (but not Principle 17.01) and impaired his independence or integrity and the good repute of the profession. In relation to allegation 6, the Respondent had not been prompt in his dealings with the SRA and so the allegation was made out.

**The costs of the Applicant**

22. The Applicant asked for his costs in the sum of £12,108.05.

**Mitigation of the Respondent**

23. The Respondent had produced medical evidence concerning problems that he had had with his health which had led to the difficulties that he had encountered. His serious health problems had now been addressed and he suffered from no residual health problems. He had employed a new bookkeeper in whom he had confidence.
24. The Respondent admitted that he had made some mistakes and agreed in relation to the accounts breaches that he had absolute responsibility for these. However he repeated that the mistakes he had made had been down to his very poor eyesight at the time.
25. The Respondent told the Tribunal that the majority of his files did have client care letters and that the files examined by the Forensic Investigation Officer had been unrepresentative. In addition no one had been taken advantage of and no one had complained.
26. Whilst the accounting errors had been down to his original bookkeeper he realised that this did not attenuate his own responsibility.
27. He wished to point out to the Tribunal that no dishonesty had been alleged against him.
28. In regard to the Applicant's costs of £12,108.05 his was a legal aid practice and life was very difficult in the present economic circumstances. He wished the Tribunal to take that into account when dealing with the penalty and the costs.

**Previous findings of the Tribunal**

29. The Respondent had appeared before the Tribunal on 16<sup>th</sup> and 17<sup>th</sup> May 2002 and on 12<sup>th</sup> June 1986.

**The Findings of the Tribunal**

30. Allegations 1-4 had been admitted and all of the allegations had been proved.
31. In relation to allegation 5 the Tribunal had noted that there had been no written agreement concerning the sum of £20,000 and as a matter of fact found that the Respondent's conduct in this matter had been likely to compromise or impair his independence or integrity. The Respondent had been put in a position where his professional ethics could have been influenced as he owed Mr and Mrs R £20,000. In addition the Respondent was unable to explain whether this money was a gift or a loan and if there had been a formal agreement for the Tribunal to examine then they may have found it reasonable. However there was nothing in writing.

32. In relation to allegation 6 the information from the bank had not been provided promptly to the Forensic Investigation Officer. In addition the Tribunal would have expected him to have been able to obtain balances on the accounts as requested by the FIO. The main problem had arisen when the Respondent had not provided the FIO with the letters from the bank sent to him in October 2007.
33. The Tribunal had looked at the two previous sets of findings relating to the Respondent's previous appearances before the Tribunal. In particular in regard to the hearing on 16<sup>th</sup> and 17<sup>th</sup> May 2002 they did not find any of the facts in that case to be relevant to the proceedings before them today.
34. The Tribunal had taken into account the late cooperation of the Respondent and his admissions, together with the ill health that he had clearly suffered. However the Solicitors Accounts Rules were there to protect the public and any breaches of them were a serious matter. Although there had been no loss to any of the Respondent's clients the Tribunal were concerned that matters had not been rectified once he had become aware of them. In addition the position with the monies received from Mr and Mrs R had been most unsatisfactory and likely to lead to the compromise of the Respondent's independence or integrity.
35. In all of the circumstances the Tribunal found the matters to be too serious for a reprimand and that a fine would be most appropriate in this case. The level of the fine would be set at £5,000 and costs granted in the sum of £10,000, mitigated to take into account the Respondent's submissions as to his financial position, in accordance with the judgement of the Administrative Court in the case of D'Souza – v – The Law Society [2009] EWHC 2193 (Admin).
36. The Tribunal Orders that the respondent, Anthony David Davis of Davis and Co, 3 Victoria Mews, De Montford Place, Leicester, LE1 7GZ, solicitor, do pay a fine of £5,000, 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 £10,000.

Dated this 27<sup>th</sup> day of February 2010  
On behalf of the Tribunal

Mr E Richards  
Chairman