

IN THE MATTER OF GRAHAM GIBBONS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr N Pearson
Mr G Fisher

Date of Hearing: 5th November 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 Victoria Hunt, a solicitor of the SRA at 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 16th March 2009 that Graham Gibbons of James Oliver Solicitors, 36 Station Road, Standiacre, Nottingham, Nottinghamshire, NG10 5AS, a solicitor, might be required to answer the allegations contained in the statement that accompanied the application and the further allegations contained in a supplementary statement dated 29th June 2009 and that such Orders might be made as the Tribunal should think right.

The allegations against Graham Gibbons (the Respondent) were that:-

1. He had failed or in the alternative delayed in delivering accountants’ reports to the SRA within the permitted time contrary to Section 37 of the Solicitors Act 1974.
2. No proper accounting records had been kept or maintained in breach of Rule 1 32(2) and (4) of the Solicitors Accounts Rules 1998 (SAR).
3. No bank reconciliation statements had been prepared for a period of at least 12 months, in breach of SAR 1998 32(7).

4. Bank charges had been deducted from client account in breach of Rule 22 SAR 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 5th November 2009 when Victoria Hunt appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent, Graham Gibbons of 30 Stanton Road, Sandiacre, Nottingham, NG10 5DD, solicitor, do pay a fine of £3,000.00, 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 £2,100.00

The Tribunal further Orders that unless the Respondent do file all outstanding Accountant's Reports with the Solicitors Regulation Authority by 5th May 2010 then he will be suspended from practice as a solicitor for an indefinite period.

The facts are set out in paragraphs 1 – 30 hereunder:-

1. The Respondent, born in 1966, was admitted as a solicitor in 2003. His name remains on the Roll.
2. At the material time the Respondent had been in practice on his own account under the style of James Oliver Solicitors of 36 Station Road, Sandiacre, Nottingham, Nottinghamshire, NG10 5AS.

Allegation 1

3. On 8th October 2007 an email had been sent from the SRA to the Respondent regarding the first accountants report expected for the firm of James Oliver Solicitors and had requested the Respondent to reply in writing indicating the exact date that he had first held clients' money or controlled trust money. The email had also indicated the report was expected to run from that date and cover a period up to 12 months and would be due to the Law Society exactly six months after the period end date.
4. On 6th December 2007 the SRA had written to the Respondent to indicate that they had been expecting the first accountant's report covering the period 7th March 2006 to 6th March 2007 which had been due on 6th September 2007. Again the Respondent had been asked to advise the exact date that he had first held clients' money and/or controlled trust money.
5. On 19th December 2007 a letter had been sent to the Respondent referring to a telephone conversation confirming an amended date for his accountant's report for a twelve month period from 8th July 2006 to 7th July 2007 which would be due on or before 7th January 2008.

6. On 7th January 2008, the Respondent had sent an email to the SRA indicating that due to his bookkeeper, who was his mother, being quite ill, it had been necessary for him to pass the data to another person for completion before getting the accounts signed off. The Respondent had indicated that it would be likely to take some 2 to 3 weeks and had requested an extension. An extension had been given to 28th January 2008 to deliver his accountant's report.
7. On 23rd January 2008, the Respondent had written indicating that it had not been possible to collect the complete data from his previous bookkeeper as his mother had continued to be "extremely ill" and was about to undergo heart surgery. His mother had however been able to provide some data to his accountant. The accountant had informed him that it would take about six weeks to produce a report and that they would have to start from scratch using their system. A request had been made for a further extension.
8. The SRA had tried to contact the Respondent by way of telephone on 30th January and had written to him on 31st January 2008 granting a further extension of time to 10th April 2008. However, having not received any report by 10th April 2008, a letter had been sent by the SRA to the Respondent on 12th May 2008 indicating that the Rules required the Report to have been delivered by 10th April 2008 and that given that the Report remained outstanding, the provisions of Section 12(1) (e) applied to the Respondent which meant that he would have to give notice of intention to apply for his next practising certificate by means of completing an RFS12.
9. As the Report had remained outstanding, the matter had been referred to Regulatory Investigations and the caseworker had written to the Respondent on 17th June 2008 indicating that the Report was now over three months late, and as such, the caseworker had requested the Respondent's explanation within the next 14 days.
10. No response had been received to the letter of 17th June 2008 and as such a further letter had been sent on 12th August 2008 advising that the matter was now going to be referred for a formal adjudication. A copy of the report was attached and the letter had indicated that if the Respondent wished to make any representations he must do so within the next 14 days. No response had been received to that letter.
11. On 1st October 2008 the Adjudicator had found that the Respondent had acted in breach of Section 34 of the Solicitors Act as the first accountant's report for the firm of James Oliver Solicitors for the year ending 7th July 2007 which had been due on 10th April 2008 remained outstanding. The Adjudicator had expected the Respondent to deliver the outstanding report within 28 days of the date of the letter notifying him of the decision and that if he had not done so then the Adjudicator had decided to refer his conduct to the Tribunal. A letter had been sent to the Respondent on 7th October 2008 enclosing the Adjudicator's decision together with notification in a letter that he had 14 days within which to appeal the decision of the Adjudicator. The Respondent had not responded nor had he delivered the accountant's report within 28 days. The accountant's report for the period ending 7th July 2007 had been due to be received by the SRA on or before 10th April 2008 but remained outstanding.
12. The issue of the outstanding accountant's report for the year ending 7th July 2008 had been raised by the caseworker in the SRA's letter of 22nd January 2009. The letter

had indicated that the report had been due for delivery on or before 7th January 2009 and had not been delivered. The Respondent had been asked for his explanation.

13. The Respondent had addressed the issue in his letter of 4th May saying:-

“I am aware that the accounts have not been filed but as I mention above it was my own circumstances that suffered rather than the clients’ files. I am afraid that I just tried to plough on and deal with the overall situation as best I could until I was able to recover the documents and get the accounts prepared. In fact in October I was able to recover data and sought outside help from my former practice manager who was able to help. I completely accept that the accounts are very late and accept that there will be a condition on my practising certificate of some sort”

14. The Respondent had said further that “finally the accountant’s report for the year end July 2008 is being prepared at the same time as previous years and will be submitted as soon as it is received and signed off. This should be within the next 10 days.” It had been indicated by Richard Nelson (the Respondent’s solicitor) that “by 31st March reporting accountants estimate that they can conclude the accounts for the years 2006/07, 2007/08 and 2008 to date of closure (having extended the accounting period by application to the SRA) Solicitors Accounts Rules Report prepared and a cease to hold report prepared”.
15. The reporting accountants, in their letter of 19th February 2009, had confirmed that they had been approached by the Respondent and had agreed to act on his behalf in completion of his accounting records. However to date all reports remained outstanding.

Allegation 2

16. On 24th October 2008 the Practice Standards Unit (“PSU”) had sent a letter to the Respondent advising him of the intended visit on 10th - 11th December 2008. Accompanying the letter had been a schedule setting out the documentation that should be made available to the visiting PSU Adviser (“the Adviser”), including accounts information. On 28th November 2008 the Respondent had spoken with the Adviser and said that he was going to be forwarding his accounting information to a former colleague that weekend. The Adviser had asked the Respondent to retain copies of the accounts information so that it could be reviewed during the visit. Only a small amount of accounts information had been retained at the time of the visit.
17. It did not appear that the Respondent had maintained any proper accounting records although it had been noted that he had retained some accounting information on individual files but that had not been sufficient to comply with Rule 32(2) (b) and Rule 32(4) of the SARs. For example, the Respondent had failed to maintain a double entry system which would show all movements on client and office accounts side of the ledgers.
18. Following the visit on 10th December 2008, the Adviser had sent two letters, on 19th December 2008 and 19th January 2009, to the Respondent enclosing her report. A letter had also been sent by a caseworker in Regulatory Investigations to the

Respondent on 22nd January 2009 seeking his response in relation to the various findings contained in the Report. He had been asked why he had failed to maintain proper accounting records.

19. The Respondent had replied to the Adviser on 29th January 2009, stating that he was meeting with his book-keeper that weekend to discuss the accounts and implement an appropriate accounting system and that it would include the appropriate double entry system. The Respondent again had mentioned the new system that was being set up and that he had appointed an experienced office manager who would provide expertise in compliance and accounting to ensure that the Rules would be “completely complied with”. The Respondent had also indicated his intention to attend a SARs training course on 1st April 2009.
20. In his letter of 4th May 2009, the Respondent had said that his firm was very small with a turnover of less than £50,000 per annum and less than 140 clients. He had explained that his mother had been his book-keeper for several years and had become very ill. Upon her becoming ill he had purchased a product from Peapod that had included an accounting facility but unfortunately the system had not been installed correctly and had never worked. The Respondent had stated that he had now recovered data and the accounts were being prepared by an experienced solicitors’ book-keeper and practice manager and that his accounts for 2006/07 and 2007/08 were almost complete and would be delivered within the next two weeks. The Respondent had indicated that a double entry accounting for client transactions had been set up and would be implemented immediately after 5th February when the book-keeper attended the office to implement it. The new system was said to be manual and would be fully compliant with the SARs, in addition it would be managed by a book-keeper remotely on a daily basis.
21. Further in an email of 16th February 2009, the Respondent had said that year one had been written up and that it was hoped that year two would be completed very soon.
22. In his letter of 19th February 2009, Richard Nelson Solicitors representing the Respondent had said that “these breaches are acknowledged, but in essence, arise out of his single but ongoing failure to maintain adequate system of record keeping in compliance with the Solicitors Accounts Rules (SAR). It will be seen that his failure to produce documents was not a reluctance to comply with a reasonable request by the Solicitors Regulation Authority (SRA) but rather a demonstration of fact that the documents concerned did not exist in the first place. Indeed these failures and the matter for which he has already been referred to the Solicitors Disciplinary Tribunal all emanate from the same set of circumstances”.

Allegation 3

23. The Respondent had accepted during conversations with the Adviser that he had not produced reconciliation statements for the client account for at least the past 12 months in breach of Rule 32(7) of the SARs.
24. In his letter of 29th January 2009, the Respondent had said that his new bookkeeper would be forwarding reconciliations and ledgers by email on a daily basis. On 16th February 2009, by email the Respondent had indicated that his draft accounts for year

one were complete and would be signed off by chartered accountants that week which he would then be able to forward to the Adviser. However the draft accounts for year two he had hoped would have been completed that week and they had been moving on to reconcile year three. It had been anticipated by the Respondent's legal representative that by 19th March 2009 all the reconciliations would have been undertaken by the book-keeper and checked by the Respondent.

25. In his letter of 4th May 2009 the Respondent had stated that:-

“As a very small firm, the client account is relatively straightforward to manage. I accept that I do not keep the appropriate reconciliations but can say that these will be managed correctly in the future as systems are now in place to do this. There were reconciliations of a sort but they were not to the required standard. The systems are now being put in place and we are meeting with the book-keeper and office manager this week to set up the appropriate system now. At the same time I should have my draft accounts and will get these signed off straight away (within the week) and forward them to the SRA straight away”.

Allegation 4

26. The Adviser had noticed from the bank statements provided that NatWest had been deducting charges from client account each month and had done so every month for 2008 and for some of 2007. From the statements available, the Adviser had ascertained that the following payments had been deducted:-

30 th June 2008	£14.62
29 th August 2008	£22.23
31 st October 2008	£87.07

27. These had been unauthorised withdrawals from client account in breach of Rule 22 of the SARs. The Adviser had indicated that bank charges should be deducted from office account and not from client account and that the Respondent had confirmed he would contact his bank immediately to ensure that this was altered. The Respondent had been asked to confirm that charges would no longer be deducted from client account, the Respondent had been asked for his explanation by way of letter of 22nd January 2009. In his letter of 29th January 2009, the Respondent had said that he had spoken to the account manager who had recognised that the charges should not have been applied to the account and that they were being refunded. He had also indicated that statements would be monitored much more closely than previously by both himself and his book-keeper.

28. In a letter of 19th February 2009, Richard Nelson had stated:-

“It is believed that there has been a shortfall on client account and that this has been caused by the bank wrongly applying charges to the account, despite instructions that these should be taken from the office account only. In addition to charges, they have applied interest to the account, again causing a breach of the accounts rules but offsetting any shortfall.”

The Respondent's solicitor had stated that the bank had withdrawn maintenance charges in respect of the running of the account and that they were scheduled below. Apparently the bank had also taken a fee from the client account in relation to CHAPs transfers and that the bank had credited interest in respect of client account balance to the client account from time to time and this had served to offset the maintenance charges levied. Richard Nelson had stated that "as and when cases have been completed and the bill done and submitted to the client, the rendering of that bill has removed the shortfall created by the CHAPs transfer". The total shortfall on client account as at 18th February relating to maintenance charges had been £639.78. The bank had refunded the money and therefore the shortfall had been remedied.

29. The Respondent had added further that "NatWest had previously agreed to report charges incurred on the client account but to deduct the fees from the office account. In discussing the bank [sic] these seem to be TT charges for completion transfers which are accounted for by the client. In addition the bank has deducted other charges contrary to our agreement". The Respondent had also forwarded an email from NatWest on 5th February 2009 to the caseworker indicating that NatWest had confirmed that all charges on the account would be deducted from the office account.
30. On 23rd February 2009 Richard Nelson had written enclosing a memo from NatWest showing interest credited to the account for the period 6th February 2006 to 1st December 2008 of £1,014.46. The Respondent's representative had indicated that the interest would offset the shortfall caused by the bank charges and in fact appeared to result in a surplus in client account.

The Submissions of the Applicant

31. The Applicant explained that because of a change of address the Respondent had only become aware of the date of the hearing on 3rd November 2009. However, the Respondent was present and wished to proceed. With the consent of both parties, the Tribunal allowed the first allegation to be amended to include all outstanding accountants' reports including those relating to the closure of the Respondent's practice.
32. The Applicant took the Tribunal through the allegations and the facts together with the supporting documentation. She explained that while there was no ongoing risk, the accounting records remained outstanding. The Applicant said that the Respondent had co-operated fully with the SRA. An order for costs fixed at £2,100.00 was sought. In response to a question from the Tribunal, the Applicant explained that three complaints relating to the Respondent's firm had been received but they were being dealt with by the Respondent and did not involve any financial issues.

The Submissions of the Respondent

33. The Respondent told the Tribunal in detail about his former practice and his accounting difficulties caused initially by the illness of his bookkeeper. He explained the measures he had taken in the short term and the failures of subsequent longer term arrangements. The Respondent gave the Tribunal full details of his personal circumstances and of a failed merger, a closure of his practice and a resultant loss of fees. He explained his present circumstances and income. The Respondent

confirmed that he had instructed accountants to finalise all his outstanding accounts and subject to the payment of their fees, he would be in a position to file those accounts within six months.

The Decision of the Tribunal

34. In order to ensure the protection of the public the Tribunal stressed that it was essential for solicitors' practices to have the fundamental requirements of the Solicitors Accounts Rules in place and for accounts to be submitted to the profession's regulator within the time limits. Having considered all the evidence and the helpful submissions of the Applicant and the Respondent's explanations and mitigation, the Tribunal ordered that the Respondent pay a penalty of £3,000 and costs fixed at £2100. Although the Tribunal sympathised with the personal difficulties of the Respondent and gave him credit for closing his practice, the Tribunal stressed that it was essential that his outstanding accounts be filed and the Tribunal ordered that unless all his outstanding accountants' reports were filed with the SRA by 5th May 2010, the Respondent would be suspended from practice as a solicitor for an indefinite period.

Dated this 27th day of February 2010
On behalf of the Tribunal

W M Hartley
Chairman