

IN THE MATTER OF DAVID JAMES CARR, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mrs J Martineau (in the chair)  
Mr A Gaynor-Smith  
Lady Bonham Carter

Date of Hearing: 24th March 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 (the SRA) by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 18<sup>th</sup> June 2008 that David James Carr of Accrington, Lancashire 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:-

1. That he had dishonestly provided misleading information to a client as to the progress of his case, so acting in a manner which compromised or impaired, or was likely to compromise or impair, his integrity, his duty to act in the best interests of his client, his own good repute or that of the profession and his proper standard of work, contrary to Solicitors Practice Rule 1(a)(c)(d)(e).
2. That he acted towards his employers with a lack of frankness and good faith.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included frank admissions made by the Respondent to the SRA in correspondence.

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

The Tribunal Orders that the Respondent, David James Carr of Accrington, Lancashire, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,074.82.

**The facts are set out in paragraphs 1 - 5 hereunder:-**

1. The Respondent, born in 1976, was admitted as a solicitor in 2003. At the material times he was employed as an assistant solicitor by Berkeley Solicitors at 100-102 Market Street, Droylsden, Manchester, M43 6DE. The Respondent had served a two year training contract with the firm prior to qualifying and had been in their employment from May 2001 to 17<sup>th</sup> March 2006. The Respondent's name remained on the Roll of Solicitors.
2. The allegations were based on the Respondent's conduct of a personal injury claim for the client, Mr S, who had been involved in an accident whilst riding his motorcycle in January 2001. Mr S had sustained personal injury and loss. He instructed Berkeley Solicitors in June 2002 and his case was handled by the Respondent under the supervision of Berkeley & Co's principal.
3. The evidence in the case was not particularly helpful to Mr S. The third party's insurers did at one stage propose a settlement on the basis that 25% of the liability fell upon their insured. There was no final settlement.
4. In November 2003 the Respondent and his supervisor had a discussion about the case. In view of the lack of evidence in support of Mr S's case, they decided there was less than a 50% chance of success and that the financing insurers should be informed that the file was closed. The Respondent did not take the necessary action but continued to deal with the case outside the parameters of his employment thereby concealing from his supervisor what was happening.
5. The last date for institution of proceedings in the matter was 2<sup>nd</sup> January 2004. No proceedings were launched at all, but the Respondent led Mr S to believe that proceedings had been issued, that the matter had been resolved in his favour and that he, the Respondent, was working on quantifying the damages.

**The Submissions of the Applicant**

6. Even after the last date for the issue of proceedings had passed without such issue the Respondent continued to string along his client, dealing with the matter outside his usual work at the firm. The Respondent's actions in misleading the client in that way were deliberate and could not be viewed in any other way than that they were dishonest.
7. The Respondent, to his credit, had made frank admissions.

8. The Applicant provided a schedule of costs to the Tribunal indicating that he sought an inclusive figure of £4074.82.

### **The Submissions of the Respondent**

9. The Respondent did not play any part in the disciplinary proceedings but the Tribunal record here that in an email addressed to the SRA on 29<sup>th</sup> May 2007 the Respondent said:-

“I admit that I did subsequently mislead Mr S, as time progressed this did get worse and I can have no defence for this. In retrospect I should have sought another avenue for resolving the missed limitation date. Mr S’s claim was over as far as the insurers for the defendant were concerned following the missing of the limitation date. I did then mislead him that his case was continuing. I can confirm that his claim was unsuccessful and no monies were received, there was not an agreement to settle the claim. This was misconduct on my behalf and was a weakness under pressure. I simply stuck my head in the sand and hoped that this would go away.”

### **The Tribunal’s Findings**

10. The Tribunal found the allegations to have been substantiated. It was clear that the Respondent had admitted his actions leading to the formulation of the allegations.
11. The Tribunal was in no doubt that the Respondent had seriously breached Practice Rule 1 and had acted dishonestly. The Tribunal gave the Respondent credit for his frank and open admissions and recognised that he was a relatively young and inexperienced solicitor, at the material time, who had given way to pressure.
12. In recognition of its duty to protect the public and the good reputation of the solicitors’ profession, having made a finding that the Respondent had been dishonest, it was both appropriate and proportionate that the Respondent be struck off the Roll of Solicitors and that he pay the costs of and incidental to the application and enquiry. The Tribunal considered that the figure sought by the Applicant for his costs was entirely reasonable and it ordered the Respondent to pay fixed costs in that sum.

Dated this 18th day of June 2009

On behalf of the Tribunal

J Martineau  
Chairman