

IN THE MATTER OF MORAY CHARLES LIVINGSTONE MACPHERSON,
former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr A G Gibson (in the chair)
Mr R Nicholas
Mr J Jackson

Date of Hearing: 16th June 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 Margaret Eleanor Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ, solicitor, on 21st October 2008 that Moray Charles Livingstone MacPherson (a former solicitor) c/o Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, PR1 8QF 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.

1. The allegations against the Respondent were that he had been guilty of professional misconduct in that:-
 - 1.1 He had failed to comply with and/or delayed in complying with undertakings which he had given namely:-
 - 1.1.1 To 'CI' on 17th January 2006 and/or
 - 1.1.2 To 'TL' on 26th May 2006 and/or
 - 1.1.3 To 'B LLP' on 11th January 2006 and/or 7th February 2006 and/or 22nd February 2006 and/or 22nd May 2006 and/or 25th May 2006 and/or
 - 1.1.4 To 'MR' on 23rd May 2006

- 1.2. He facilitated the withdrawal of client money from client account other than in accordance with Rule 22(1) of the Solicitors Accounts Rules 1998 ['SAR 1998']
- 1.3. Contrary to Rule 1 of the Solicitors Practice Rules 1990 and/or Rule 22 of the SAR 1998 he utilised money held in his firm's client account on behalf of 'A Ltd' for the benefit of a client without first obtaining A Ltd's consent.
- 1.4. He made transfers from the ledger of one client account to the ledger of another client other than in accordance with Rule 30 SAR 1998.
- 1.5. He failed to ensure that the accounting records were properly written up in accordance with Rule 32 SAR 1998.
- 1.6. Contrary to Rule 1(a) and/or (d) of the Solicitors Practice Rules 1990 he sought to conceal his actions in respect of allegation 1.1 above from his fellow partners.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 16th June 2009 when the Applicant appeared and the Respondent appeared and was represented by Stuart Turner of Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, PR1 8QF.

The Evidence before the Tribunal

The evidence before the Tribunal consisted of the Rule 5 Statement of the Applicant, with accompanying bundle and the statement of the Respondent dated 28th May 2009.

The allegations were all admitted. The Respondent was no longer on the Roll of Solicitors having been removed in a bulk termination exercise on 25th June 2007, following his failure to respond to correspondence seeking confirmation that he wished to remain on the Roll.

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

The Tribunal Orders that the Respondent, Moray Charles Livingstone MacPherson of c/o Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, PR1 8QF, former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.00.

The facts are set out in paragraphs 1 - 24 hereunder

1. The Respondent, Moray Charles Livingstone MacPherson, was admitted to the Roll on 15th November 1985, his date of birth is 4th November 1959.
2. The Respondent was subsequently removed from the Roll on 25th June 2007 as part of a bulk termination exercise conducted by the SRA following his failure to respond to correspondence seeking confirmation that he wished to remain on the Roll.

3. At all material times the Respondent practised in partnership under the name of Osborne Clarke (“the firm”) 2 Temple Back East, Temple Quay, Bristol, BS1 6EG. He joined the firm on 10th June 2004 and was promoted to equity partner in May 2005 and resigned from the partnership on 6th July 2006.
4. An investigation on behalf of the Law Society’s Forensic Investigation Unit was commenced on 27th November 2006 at the offices of the firm; the investigation followed a report to the Law Society from the firm by the managing partner concerning the Respondent’s actions. The results of the investigation were contained in a Forensic Investigation Report dated 27th June 2007.
5. A report was also prepared by the firm’s auditors, KPMG, which identified several breaches of the Solicitors Accounts Rules.
6. Shortly after the Respondent joined the firm, he began acting for ‘LP’. LP was wholly owned by a Mr A but all instructions from LP came via a Mr M.

Breach of Undertakings

CI

7. On 17th January 2006 the Respondent was instructed by Mr M to give an undertaking in favour of CI to hold 155,000 share certificates in a restricted stock to CI’s order. The undertaking was given in a letter on the firm’s headed notepaper. Despite requests for delivery of the shares to CI on 29th January 2006, 8th February 2006 and 5th and 7th April 2006 the share certificates were not delivered until 10th May 2006, some three months after the initial request for their delivery.

TL

8. Mr LH controlled D Ltd and both of them were apparently long term funders of Mr M. Between March and May 2006, the Respondent gave a series of undertakings to TL solicitors acting for Mr LH and D Ltd. These culminated in an undertaking given by the Respondent on 26th May 2006 to those solicitors that:-

“We hereby undertake to pay to your client account no later than 3pm on 30th June 2006 the sum of £1M by CHAPS transfer.
We further undertake that we are holding to your order the sum of £50,000 by way of fees due from our client to yours.”

9. On 27th June TL indicated that they would require payment by 30th June 2006. The deadline was subsequently extended on 30th June to 4th July, subject to another undertaking but as that was not forthcoming on 3rd July TL requested immediate payment of the £1M. On 7th July Mr LH complained to the Respondent’s managing partner and the firm paid the £1M from its office bank account in satisfaction of the undertaking.

B LLP

10. The Respondent also gave a series of undertakings to another firm of solicitors, B LLP, in order to secure advances from U Ltd to LP. Mr M had indicated that he needed £250,000 against a solicitors undertaking and on 11th January 2006 one was given by the Respondent in the following terms:-
- “We hereby undertake to hold the sum of £250,000 GBP to your order and return the same to you immediately upon demand by you without any deduction or set-off.”
11. Repayment of the loan was first requested via Mr M on 19th January 2006 and subsequently on 24th and 25th January 2006. The Respondent requested an extension which was granted until 27th January 2006. However, on that date he was still not in a position to honour the undertaking and two further requests were made on 30th January. The undertaking was finally discharged on 31st January 2006.
12. On 7th February 2006 another loan was made from U Ltd to LP and the Respondent gave another undertaking to hold the £250,000 loan monies to the order of B LLP but a proviso of return by 2pm on 15th February 2006 if no agreement between the respective clients was reached. The Respondent did not reply to subsequent emails concerning fees and breached the undertaking on 15th February 2006. Following a further request the £250,000 was paid later on 16th February 2006.
13. On 22nd February 2006 the Respondent gave an undertaking to B LLP to hold £300,000 to their order and a further undertaking on 28th February that the £300,000 would be repaid with fees and interest by close of banking hours on 3rd March. The Respondent was not in a position to honour the undertaking, and extensions were granted to 9th then 14th March 2006. The Respondent did not reply to a further request for repayment on 16th March and the £300,000 was not repaid until 17th March 2006.
14. On 2nd May 2006 the Respondent gave an undertaking regarding a total sum of £100,600 loaned by U Ltd to LP which was to be repaid to B LLP not later than 1pm on 3rd May 2006. The funds were not repaid on that date but an extension was granted to 4th May 2006. £100,000 was repaid on that date and upon it being pointed out to him that this was not the full amount, the Respondent promised to put the £600 in the banking system the next morning.
15. On 25th May 2006 the Respondent gave a replacement undertaking for one that had initially been given on 9th May 2006 and subsequently extended. The undertaking referred to a sum of £277,525 loaned by B LLP to LP and it undertook return of the sum by 1st June 2006. The Respondent failed to honour the undertaking on 8th June 2006 and made no response to B LLP. On 9th June 2006 a letter was sent to the firm by B LLP advising them of the breach and the firm paid B LPP £277,525 from its office account on 13th June 2006.

M

16. M were solicitors representing Mr L. Mr M negotiated a loan from Mr L on behalf of LP in the sum of £1.6M. On 23rd May 2006 the Respondent gave an undertaking to M concerning this loan. The undertaking was that the monies would be held to M's order with a long stop date of repayment by 26th June. The loan of £1.6M was credited to LP's client account at the firm on 23rd May 2006 and by 5th June 2006 it had been reduced to £10,046.51 by payments made on Mr M's instructions in breach of the undertaking. Despite Mr M's assurances M never released the Respondent from his undertaking. The Respondent breached his undertaking and the firm was forced to repay the monies from the office bank account on 26th June 2006.

Breach of Rule 22 and Rule 30 SAR

17. KPMG investigated the LP matters. They identified 22 payments made out of the client account relating to 'O' for which no supporting documentation could be located. There was therefore no evidence that O had given authority for these payments and they were therefore made in breach of Rule 22.
18. KPMG also identified 8 client to client ledger transfers on the O client account, 5 of these were made in breach of Rule 30 regarding the transfer of monies from O to LP. Supporting documentation supporting the transfer to other client ledgers could not be located and the transfers did not match KPMG's understanding of the matter.
19. KPMG reviewed the LP ledger and identified 5 client to client transfers where there was no documentary evidence to support them and a further 5 where the evidence was questionable.

Breach of SPR 1 and Rule 22 SAR

20. LP introduced A Ltd to a property project in which they were potential purchasers. The vendors were being represented by another partner in the firm. On 14th March 2006 A Ltd sent £825,000 to the firm and the Respondent authorised the funds to be credited to the client ledger of LP. On about 17th March 2006 A Ltd decided to pull out of the deal but did not request the return of their £825,000. On 21st March 2006 the Respondent was making payments due to LP's creditors from the LP account when he realised there were insufficient funds. LP then informed him that the A Ltd monies were also on the LP client account at the firm and the Respondent then made payments on LP's instructions from the A Ltd monies. The Respondent says that LP informed him that they had agreed a loan from A Ltd. Despite requesting evidence of this from LP, upon receiving none he made the payments anyway.
21. On 19th May 2006 A Ltd requested the return of its £825,000 plus interest. They requested them again on 23rd May 2006. The £825,000 was eventually paid to A Ltd as on 24th May 2006 from the £1.6m monies held in the LP account, which were monies received from M and a letter from A Ltd was received confirming the loan from A Ltd to LP dated 22nd June 2006. When the Respondent heard that KPMG had asked for this particular file he sent an email saying 'This could mark the end of a beautiful career'.

Breach of Rule 32

22. KPMG identified 5 instances where monies were received which did not fit with the matter description.

Concealing his actions from his partners

23. It became clear, following an internal report at the firm which reviewed the various matters where the Respondent had acted for LP and Mr M, that the Respondent had not been frank concerning the extent of breach of undertakings, even after discovery and a meeting with the managing partner. It was also apparent from the contents of emails that he had deliberately sought to conceal these matters from his partners e.g. in regard to the undertaking to TL he made the following comment:-

“I really cannot tell [the managing partner] about this one.”

24. It was concluded within the firm’s own internal investigation that:-

“It is also clear that probably throughout he knew what he was doing was wrong and was determined to keep what he was doing away from his partners.”

The Submissions of the Applicant

25. The Applicant submitted that these were very serious matters and that the Respondent had been a serial giver and breaker of undertakings. It was paramount to the reputation of the profession and public confidence in it that there was never any doubt as to compliance with a solicitor’s undertaking. Further it was apparent that the Respondent had given undertakings at a time when he was not absolutely certain they could be complied with.
26. In addition to the breaches of undertakings there were also breaches of the Accounts Rules arising from those breaches.
27. An aggravating feature of the case was the Respondent’s attempts to conceal some matters from his partners even when others had already come to light. He did not disclose the extent of the problems with the undertakings to his partners.
28. The Applicant submitted that under Section 47(2) of the Solicitors Act 1974 the Tribunal had power to make any order they think fit, which was an overriding power. A common order in a case such as this would be an order under Section 47 (2)(G) which was an order prohibiting the Respondent from having his name restored to the Roll of Solicitors except by order of the Tribunal. The Applicant submitted that she entirely accepted that this was not the only order that could be made but in view of the seriousness of the allegations it seemed the most appropriate. By means of a prohibition order the Tribunal could satisfy itself that the Respondent was a fit and

proper person by taking into account his actions since the making of the order in any application to have his name restored to the Roll.

29. The Applicant submitted that there was no allegation of dishonesty in this case.

The Submissions of the Respondent

30. The allegations were all admitted and all of them resulted from his dealings with Mr M. The Respondent submitted that he believed in all matters that he had authority from Mr M. He had worked with Mr M since March of 2000 at various firms, their relationship initially working well and high fees having been generated for those firms. Mr M's demands were high and his dealings complex so that the Respondent lost sight of the true picture.
31. His human reaction had been to try to resolve matters and he had not wholly concealed his problems from the other members of the partnership. He had initially given undertakings when there were always sufficient monies but things had got out of hand.
32. The Respondent was now in reduced circumstances and was being pursued for the £3.2M due to the firm's insurers. The Respondent accepted his responsibilities and was unlikely to work as a solicitor again. He apologised to the Tribunal. He had always had his clients' best interests at heart and had received no personal benefit from the matters before the Tribunal.
33. He had never before appeared before the Tribunal.
34. Costs were agreed as fixed in the sum of £16,000.00.

The Tribunal's Findings and its Reasons

35. The Tribunal found all of the allegations proven, indeed they had not been contested.
36. The Tribunal had listened carefully to the submissions made by the parties and noted that this was the Respondent's first appearance before the Tribunal. The Tribunal was minded to make a prohibition order for the following reasons:-
- (i) There had been an indiscriminate use of funds which were held to the order of another client.
 - (ii) The reckless issue of serial undertakings given in circumstances where the Respondent could not be certain that they would be complied with. Solicitors undertakings are the bedrock of English legal practice and their breach fundamentally undermines the system and the public trust in it.
 - (iii) The lack of transparency with his partners makes the Respondent a person who lacks integrity and who should no longer practise as a solicitor.

37. The Tribunal ordered that the Respondent, Moray Charles Livingstone MacPherson, c/o Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston PR1 8QF, a former solicitor, be prohibited from having his name restored to the Roll of solicitors except by order of the Tribunal and it further ordered that he pay the costs of and incidental to the application and enquiry fixed in the sum of £16,000.00.

Dated this 21st day of August 2009

On behalf of the Tribunal

A G Gibson
Chairman