

IN THE MATTER OF COLIN PETER CAPLAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr I R Woolfe
Mr D Gilbertson

Date of Hearing: 10th September 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 Stuart Roger Turner, solicitor and partner in the firm of Lonsdales Solicitors, 7 Fishergate Court, Fishergate, Preston, PR1 8QF on 19th January 2009 that Colin Peter Caplan 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 were that the Respondent was guilty of professional conduct in that:

1. With conscious impropriety he had withdrawn money from client account for the benefit of himself and/or third parties, other than in accordance with Rule 22 of the Solicitors Accounts Rules 1998 ("SAR"). (For the avoidance of doubt that was an allegation of dishonesty);
2. He had caused a cash shortage on client account of £65,089.20 in breach of Rule 22(5) of the SAR;
3. He failed to remedy promptly upon discovery breaches of the SAR in breach of Rule 7 of the SAR;

4. He had failed to properly deal with client's money in breach of Rules 19(1) and 20 of the SAR;
5. His books of accounts had not been properly written up in breach of Rule 32 of the SAR;
6. He had failed to deliver his Accountant's Reports to the SRA for the year ending 31st March 2006 and 31st March 2007 contrary to Rule 35 of the SAR and Section 34 of the Solicitors Act 1974 (as amended);
7. He had practised in breach of conditions attached to his practising certificate for the year 2007/2008 by continuing to practise as a sole principal after the time allowed for him to do so had expired;
8. He had failed to obtain qualifying professional indemnity insurance for his firm, Ashcroft & Co Solicitors, for the indemnity year 2007/2008 in breach of Rules 4 and 5 of the Solicitors Indemnity Insurance Rules 2007 ("SIIR");
9. He had failed to apply to the Assigned Risks Pool in breach of Rules 4 and 5 of the SIIR;
10. His notepaper had been misleading to the public by failing to refer to him as a sole principal in his firm and by suggesting that the firm was a partnership in breach of Rule 7.01 of the Solicitors Code of Conduct ("SCC");
11. He had misled a Legal Complaints Service ("LCS") caseworker in the investigation of a complaint made against him in breach of Rules 1.02 and 1.06 of the SCC;
12. He had failed to account to a client in the sum of £800 within a reasonable time;
13. He had failed to act in the best interest of his client and had failed to deliver a proper standard of work in breach of Rules 1(c) and 1(e) of the Solicitors Practice Rules 1990;
14. He had failed to deal with correspondence from a client and/or her new solicitors in breach of Rule 15 of the Solicitors Practice Rules 1990 (as amended);
15. he failed to deal with the SRA and with the Legal Complaints Service in an open prompt and cooperative way in breach of Rule 20.03 of the SCC.

On 6th August 2009 a supplementary statement was made in further support of allegation 15.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th September 2009 when Stuart Roger Turner appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a letter from the Respondent dated 28th August 2009 containing admissions, explaining that he would not be attending and enclosing two medical reports.

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

The Tribunal Order that the Respondent, Colin Peter Caplan, 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 £10,215.78 excluding the costs of the Investigation Accountant of the Law Society which costs are to be subject to a detailed assessment if not agreed.

The facts are set out in paragraphs 1- 63 hereunder:

1. The Respondent, Colin Peter Caplan, born in 1954, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised on his own account as Ashcroft & Co Solicitors, 36 Hall Street, St Helens, Merseyside, WA10 1DP.
3. A Forensic Investigation Report ("FIR") was prepared on 27th August 2008 in respect of the Respondent's firm, Ashcroft & Co. It was signed by M Calvert, Head of Forensic Investigation, but the author of the Report was Investigation Officer ("IO"), Miss A Woods.
4. Miss Woods had reported that the books of account were not in compliance with the Solicitors Accounts Rules.
5. She had begun her inspection on 5th August 2008 but the Respondent had failed to attend his office for the pre-arranged appointment. She had met the Respondent's bookkeeper, Mr Crosby, on 6th August 2008 who had told her that the last client account reconciliation he had been able to prepare was as at 31st August 2006 although this had been dated 14th September 2006. The client account reconciliations had therefore not been carried out for two years.
6. Mr Crosby had said that from September 2006 there had been transactions that went through the client bank account that he could not identify as relating to specific clients and which he had not posted onto the accounts system.
7. Miss Woods had identified a client cash shortage of £65,089.20. The Respondent when asked about this had been unable to give an explanation for it.
8. Miss Woods had reviewed all client bank payments between 1st August 2006 and 30th June 2008 which had allowed her to identify transactions that might have contributed to the shortage. Two such payments had been exemplified by Miss Woods in her Report.
9. The first had been a payment to "premium credit" of £10,437.70. During that period there had been twelve direct debit payments, each of £2,087.54 from client account totalling £25,050.48. On seven occasions there had been a reversed entry crediting the client bank account with £2,087.54 on each occasion, totalling £14,612.78.
10. The Respondent had explained that the payments had been in respect of his firm's professional indemnity insurance and that the payments had been incorrectly taken

from client bank account instead of from office bank account and that they should have been reversed. A total of £10,437.70 had not been reversed, and those were improper payments from client bank account.

11. The second had been a payment to the Inland Revenue of £31,217.18 on 16th January 2007. There had been further unidentified payments and the IO had prepared a list. The Respondent had failed to provide any information to the IO in respect of those transactions.
12. In addition there had also been unexplained transfers between client ledgers. In one matter between 6th October 2005 and 14th December 2005 there had been transfers from the ledger of MS to other client ledgers ranging from £662.50 to £5,000, totalling £12,462.25. Mr Crosby, the firm's cashier, had been unable to provide an explanation or any further details stating that the files had been transferred to other solicitors. The IO had appended the ledgers to the Report.
13. The Respondent had agreed that by not writing up his accounts he had been in breach of the Solicitors Accounts Rules. He had agreed that the sums improperly withdrawn from client account had resulted in breaches of the Solicitors Accounts Rules and, when asked if he personally benefited from client monies, he had replied, "I may have done". The Respondent had made no comment when asked if his actions were dishonest.
14. The Respondent had agreed that the firm's Accountant's Reports to The Law Society for the years ending 31st March 2006 and 31st March 2007 had been overdue and that as a result he had breached the Solicitors Accounts Rules.
15. On 5th September 2008, the SRA had sent a copy of the Forensic Investigation Report to the Respondent seeking his explanation of the findings within seven days. The Respondent had failed to reply.
16. On 24th September 2008 the SRA had resolved, amongst other things, to intervene into the Respondent's practice and to refer his conduct to the Tribunal.

Allegations 7 to 10 and 15

17. The SRA had written to the Respondent on 4th January 2008 informing him that his practising certificate had been terminated on 13th December 2007 and hence that he had been practising uncertificated since then.
18. The Respondent had replied on 7th January 2008. He had said that he had not received any notification prior to his departure on holiday on 20th December and the first he knew of it had been on his return on the day of writing.
19. The Respondent had been granted a qualified practising certificate for the practice year 2007/2008 on 25th January 2008. The Respondent had appealed the authorised officer's decision to impose conditions and on 27th February 2008 an adjudicator had upheld the decision that he might act as a solicitor only in employment or in partnership or as a member, office holder or shareholder of an incorporated solicitor's practice, the arrangement for which had first been approved by the SRA. The

conditions imposed were to have taken effect on the expiry of two months from the date of the adjudicator's notification of the decision. That would have been on 28th April 2008.

20. The Respondent had been reminded of his duty to comply with the conditions attached to his practising certificate by letter dated 7th April 2008. On 24th April 2008 the Respondent had replied indicating that it was his immediate intention to merge his practice with that of J Keith Park & Co Solicitors of St Helens and to continue practising as a consultant with that firm thereafter.
21. On 9th June 2008 the Respondent had been reminded by the SRA, amongst other things, that until he had been granted approval by the SRA to be employed by J Keith Park & Co, he was in breach of conditions attached to his practising certificate for the practice year 2007/2008, in particular that he had been continuing to practice as a sole principal under the style of Ashcroft & Co after 28th April 2008. The Respondent had replied on 16th June indicating that his application for approval of employment was pending and that he had made arrangements for a suitably qualified locum to manage his own practice in the meantime.
22. On 16th June 2008 the Respondent's application for approved employment had been refused. The SRA had not been satisfied that J Keith Park & Co were able to offer the Respondent a suitable environment in which to practise as a solicitor. The Respondent had successfully appealed the decision on 4th July 2008.
23. On 25th July 2008 the SRA had sought the Respondent's explanation for having practised in breach of the conditions attached to his practising certificate for the practice year 2007/2008, since 28th April 2008. He had continued to practise as a sole principal and/or hold himself out as a sole principal under the style of Ashcroft & Co after 28th April 2008 until 4th July 2008, that being the date the SRA had granted approved employment with another firm. The Respondent had failed to reply to the letter of 25th July 2008.
24. As stated, the forensic investigation of the Respondent's books of account of Ashcroft & Co had begun on 5th August 2008. The IO carrying out the inspection, had established from the Respondent that he had not taken up the approved employment with J Keith Park & Co and that he had continued to practise as a sole principal at Ashcroft & Co, thus continuing to be in breach of the conditions attached to his practising certificate on 28th April 2008.
25. On 18th March 2008 the SRA had sought the Respondent's explanation for breaches of Rules 4.1, 5.1, 10.1, 10.5, 10.6 and 10.9 of the Solicitors Indemnity Insurance Rules 2007. The Respondent had not provided the SRA with evidence that he had qualifying professional indemnity insurance or that he had applied to the Assigned Risks Pool.
26. The Respondent had failed to respond and so a chasing letter had been sent on 29th April 2008.
27. On 9th June 2008 the SRA had written to the Respondent primarily in respect of their concern that he had been practising in breach of conditions on his practising

certificate for the practice year 2007/2008. However, within that letter the SRA had informed the Respondent that WRB, the insurers the Respondent had said he had cover with, had informed them on 11th March 2008 that they had not been providing indemnity insurance for the Respondent's practice. The Respondent had been reminded that he had been written to separately on 18th March and on 29th April 2008 and that no response had been received. A request had been made for confirmation by return as to what indemnity insurance arrangements for the practice the Respondent had in place.

28. On 16th June the Respondent had written amongst other things:

"...finally, my broker assures me that full indemnity insurance is in place, full details of which will follow under separate cover."

No details of the Respondent's indemnity insurance had ever been supplied to the SRA despite on 7th July 2008 a reminder being sent. The Respondent had therefore been in breach of the Solicitors Indemnity Insurance Rules 2007 by failing to obtain qualifying insurance for his firm, Ashcroft & Co Solicitors, for the 2007/2008 indemnity year and by failing to apply to the Assigned Risks Pool. He had also practised without indemnity insurance for the indemnity year 2007/2008.

29. On 7th July 2008 the SRA had sought the Respondent's explanation as regards a breach of Rule 7.01 of the Solicitors Code of Conduct 2007. The Respondent's headed notepaper had contained a statement at the foot of it stating that "a list of the names of partners is open to inspection at the above address." This statement had incorrectly suggested that the firm was a partnership. The letterhead also had not referred to the Respondent as the sole principal of the firm. The letterhead had therefore been inaccurate and misleading.
30. The Respondent had failed to reply and on 25th July 2008 a chasing letter had been sent.
31. On 4th September 2008 an authorised officer of the SRA had authorised the inclusion of the additional allegations in the existing disciplinary proceedings against the Respondent.

Allegations 11 and 15

Complaint by Mrs P

32. On 27th August 2007 Mrs P had written to the LCS raising a number of concerns about the service provided by the Respondent in relation to the purchase of a property. One of the complaints about the Respondent had been his failure to register the title with the Land Registry following completion of the purchase in June 2005.
33. In the course of the investigation a LCS caseworker had had a telephone conversation with the Respondent on 2nd November 2007 in connection with the outstanding registration. The caseworker's file note had stated inter alia that:

"...he (the Respondent) assured me that the issue had been resolved and would write to me and Mrs P to make her aware of this... he said that the issue had now been addressed and that the Land Registry had been notified."

34. It later had become apparent that at the time of the telephone conversation the transfer of the property to Mrs P had not been registered and the matters had been clearly outstanding. In fact, the issues had only been resolved in January 2008 following the conduct of the matter being transferred to the Respondent's colleague.
35. On 13th March 2008 the SRA had written to the Respondent formally raising the allegation that he had misled the LCS caseworker in a telephone conversation on 2nd November 2007. The Respondent had failed to reply to that letter and a reminder had been sent to him on 4th April. Again there had been no reply and on 19th June 2008 an adjudicator of the SRA had referred the conduct of the Respondent to the Tribunal.

Allegations 12-15

Complaint by Mrs B

36. The Respondent's firm had been instructed by Mrs B in July 2002 prior to the Respondent acquiring the firm in 2004. They had been instructed to deal with a personal injury claim against her former employers after an accident in April 2001. The Legal Complaints Service had investigated her complaint against the firm and on 18th January 2008 an adjudicator had made findings of inadequate professional services. The matter had then been referred to the SRA to consider the Respondent's conduct.
37. On 16th April 2008 the SRA had raised with the Respondent allegations that he had failed to account to Mrs B in the sum of £800 as referred to in the LSC decision and that he had failed to respond to letters from the LSC dated 22nd May 2006, 8th and 23rd January 2007 and 22nd February 2007 and that he had failed to act in the best interests of his client and had failed to deliver a proper standard of work resulting in Mrs B's case being struck out by the court.
38. The Respondent had not replied to the caseworker's letter. A chasing letter had been sent to the Respondent on 3rd June 2008, the Respondent had failed to reply.
39. On 26th June 2008 the caseworker had telephoned the Respondent enquiring as to why he had not responded to the SRA correspondence. The Respondent had said that he would ring the caseworker back the next morning. The caseworker had received no call from the Respondent in respect of the matter.
40. On 1st September 2008 an adjudicator of the SRA had referred the conduct of the Respondent to the Tribunal.

Allegation 15Complaints by Barrow & Cook Solicitors and Bramsdon & Childs Solicitors

41. On 8th January 2008 the SRA had written to Mr D Bevan of Ashcroft & Co Solicitors investigating the Respondent's conduct in respect of an allegation of a breach of undertaking. Mr Bevan had been an assistant solicitor working at the Respondent's practice.
42. On 6th February 2008 the SRA had written to Mr Bevan on a separate matter investigating the Respondent's conduct regarding allegations that he had failed to provide indemnity insurance details and there had been a failure to respond to correspondence from the SRA.
43. On 13th February 2008 Mr Bevan had telephoned the SRA and had explained that he had seen the letters but had not received them as the Respondent opened the post and that he had not made Mr Bevan aware of these communications. The letters had been seen on the Respondent's desk at lunchtime. Mr Bevan had explained that he was not the complaint handling partner. He was simply an associate who had taken on the job of sorting out problems. He had limited powers within the firm. Mr Bevan had said that he would email to confirm the position and would endeavour to get the Respondent to respond.
44. On 15th April 2008 chasing letters in respect of both matters had been sent to the Respondent requesting a reply within eight days. The Respondent had failed to reply.
45. On 29th May 2008 an adjudicator at the SRA had referred the Respondent's conduct to the Tribunal.

Complaint by Mrs P

46. The LCS had written to the Respondent on 2nd and 20th May 2008 in an effort to investigate the complaint made by Mrs P about the service provided by the Respondent. Two telephone calls had also been made to the Respondent on 15th May 2008.
47. The Respondent had not responded to the letters and had not returned the telephone calls.
48. On 30th June 2008 the matter had been referred to the SRA. The SRA had written to the Respondent on 13th August 2008 requesting his response in respect of the matter. The letter had reminded the Respondent of his obligation to respond to the SRA correspondence.
49. No response had been received and a chasing letter had been sent on 2nd September 2008 regarding his failure to reply and requesting a response by 10th September 2008. No response had been received.

49. On 24th September 2008 an authorised officer of the SRA had authorised the including of the allegation of failing to reply to correspondence from the SRA into the existing disciplinary proceedings against the Respondent.

Complaint by Mr W

51. On 17th June 2008 Townsends LLP, who had been outsourced by the LCS to investigate a complaint made by Mr W against the service provided by the Respondent, had returned their file to the LCS for a further review. They had been unable to progress the investigation of the complaint due to the failure of the Respondent to respond to both telephone calls and to an email of 12th June 2008.
52. On 26th June 2008 the LCS had written to the Respondent requesting the Respondent to make contact with them to discuss the complaint. He had failed to do so. On 8th July 2008 the complaint had been put in writing to the Respondent seeking an explanation to the complaint by 22nd July.
53. Having not received a reply, the matter had been followed up by telephone on 22nd July. The Respondent had been absent from the office and so a request had been made that the Respondent telephone the LCS caseworker. The Respondent had failed to telephone and so a call had been made on 23rd July; the Respondent had been unavailable. A second call had been made that day and a message left on the Respondent's mobile telephone; again the Respondent had failed to reply.
54. On 23rd July 2008 a chasing letter had been sent by the LCS to the Respondent. He had been informed that his failure to reply was preventing the LCS from dealing with the complaint and that his conduct would be considered. A full reply had been required by 30th July 2008.
55. Again the Respondent had failed to reply and so on 30th July 2008 the matter had been referred to the SRA.
56. On 3rd September 2008 the SRA had written to the Respondent requesting his response in respect of the matter. No response had been received and so a chasing letter had been sent on 19th September 2008 requesting a response by 27th September. No response had been received.
57. On 1st October 2008 an authorised officer of the SRA had authorised the inclusion of his failure to reply to correspondence from the SRA in the existing disciplinary proceedings against the Respondent.
58. On 11th September 2008 the LCS had sent to the Respondent by post their report into the firm's professional service in respect of Mr W's complaints. The Respondent had been invited to comment but had failed to do so. On 27th November 2008 an adjudicator of the LCS had made a finding of inadequate professional service against the Respondent. The decision had been relayed to the Respondent by letter of 10th December 2008. The Respondent had been required to pay Mr W compensation within seven days. The Respondent had failed to reply.

59. A chasing letter, giving the Respondent a further seven days to comply with the adjudicator's decision, had been sent on 18th December 2008.
60. The Respondent's conduct in failing to reply to the LCS had been referred to the SRA and on 20th February 2009 they had written to the Respondent at his home address seeking an explanation for his conduct.
61. Mrs AM Caplan, the Respondent's wife, had replied on his behalf on 25th February 2009 advising that her husband had been admitted to hospital as a result of a "nervous breakdown".
62. The LCS had written to the Respondent in respect of the complaint by Mr W a total of six times without receiving a reply from him. They had attempted to contact him three times by telephone, messages had been left but no calls had been returned by the Respondent.
63. On 29th May 2009 an adjudicator had referred the Respondent's conduct to the Tribunal for determination.

The submissions of the Applicant

64. The Applicant referred the Tribunal to the 15 allegations, the facts supporting those allegations and to the Respondent's letter of 28th August 2009. Mr Turner also handed to the Tribunal a letter from the Respondent to Mr Turner dated 4th March 2009 in which Mr Caplan said:

"I will not be contesting the proceedings but will be submitting medical evidence by means of mitigation."
65. The Tribunal was satisfied that the letter of 4th March 2009 was an admission of the 15 allegations and of the facts outlined in the statement dated 19th January 2009. However, there were no admissions to the additional facts contained in the supplementary statement dated 6th August 2009.
66. The Applicant explained that he was unable to withdraw the supplementary statement because it completed the details of the complaint of Mr W. However, given the extent of the admissions, which included the handling of Mr W's complaint, the Applicant would not proceed with the supplementary statement.
67. The Applicant submitted that while all the 15 allegations were serious, allegation 1 was particularly so involving, as it did, an allegation of dishonesty. Mr Turner referred the Tribunal to the relevant parts of the FIR that was before the Tribunal. He submitted that the Respondent knew that he should not have written cheques from client account to meet expenses not related to his clients. The Respondent had admitted that he might have personally benefited from client monies. Mr Turner submitted that the Respondent had been fully aware that what he was doing was dishonest and that he had made improper withdrawals from his firm's client account with that knowledge.

68. The Applicant provided the Tribunal with a schedule of costs and explained that, although sought, the SRA had failed to provide details of their costs. He confirmed that he had no knowledge of the means of the Respondent.

The decision of the Tribunal

69. The Tribunal, having considered all the evidence together with the submissions of the Applicant, the admissions of the Respondent and his letter of 28th August 2009, with the attached medical reports, found all 15 allegations both admitted and proved.
70. In addition, the Tribunal was satisfied that in relation to allegation 1 the Respondent, in withdrawing and using funds from the firm's client account for purposes unconnected with his individual clients, had been fully aware, both on an objective and on a subjective basis, that his actions were dishonest.
71. The Tribunal was informed of a previous appearance before it by the Respondent on 13th March 2008 when the Respondent had been fined £2,000 together with costs.
72. The Tribunal determined that given the extremely serious nature of the 15 allegations together with the finding of dishonesty, it was both for the protection of the public and in the interests of maintaining the reputation of the profession that the Respondent be struck off the Roll of Solicitors. In the absence of any evidence of his means from the Respondent, indicating an inability to pay, the Tribunal also made an Order for costs in favour of the Applicant and the SRA.

Dated this 1st day of December 2009
On behalf of the Tribunal

W M Hartley
Chairman