

IN THE MATTER OF MATTHEW KENNETH SPROSTON, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A. N. Spooner (in the chair)  
Mrs K. Todner  
Mr. S. Howe

Date of Hearing: 19th January 2010

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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 (“SRA”) on 23 April 2009 by Stuart Roger Turner solicitor of Lonsdale solicitors, 7 Fishergate Court, Fishergate, Preston PR1 8QF on 23 April 2009 that Matthew Kenneth Sproston, a solicitor be required to answer the allegations contained in the statement which accompanied the application and that such order be made as the Tribunal should think right.

The allegations were that the Respondent had been guilty of professional misconduct in that:-

1. He failed to comply with a Notice served by the SRA, contrary to Rule 20.06 of the Solicitors Code of Conduct 2007;
2. He failed to produce to a person appointed by the SRA any records, papers, client and trust matter files, financial accounts and other documents, and any other information, necessary to enable preparation of a report on compliance with the Rules, contrary to Rule 34 of the Solicitors Accounts Rules 1998, (SAR);
3. He behaved in a way that was likely to diminish the trust the public places in him or the profession by allowing a county court judgment to be entered against him for non-

payment of a medical expert's fees, contrary to Rule 1.06 of the Solicitors Code of Conduct 2007;

4. He issued a client bank account cheque as payment for a non-client matter, contrary to Rule 22 SAR;
5. He had failed to file with the SRA Accountant's Reports for:-
  - (i) the year ending 31 December 2007;
  - (ii) the six month period ending 30 June 2008; and
  - (iii) the period from 1 July 2008 to 16 October 2008

contrary to Section 34 of the Solicitors Act 1974, Rule 35 of the Solicitors Accounts Rules 1998 and in breach of the conditions on his then current practising certificate;
6. He acted as a solicitor without a practising certificate in force, contrary to section 1 of the Solicitors Act 1974;
7. He, with conscious impropriety, misled a client:-
  - (i) by inferring that a claim existed in their name in the County Court when it did not;
  - (ii) by informing them that a court hearing at Northwich County Court was due to take place on their case when no such hearing was listed and in fact no proceedings existed;
  - (iii) by providing a false case number to his client which he knew was incorrect,

contrary to Rules 1.02, 1.04 & 1.06 of the Solicitors' Code of Conduct 2007. For the avoidance of doubt this is an allegation of dishonesty;
8. He failed to deal with the SRA 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 19 January 2010 when Stuart Roger Turner appeared as the Applicant and the Respondent appeared in person.

### **The Evidence before the Tribunal**

The evidence before the Tribunal included the admissions of the Respondent as to allegations 1, 2, 3, 5, 7 and 8. The Respondent denied allegations 4 and 6. Mrs Adam gave oral evidence as did the Respondent.

**The facts are set out in paragraphs 1 to 25 hereunder:-**

1. The Respondent, born in 1973, was admitted as a solicitor in 1998. At the material time the Respondent practised as the sole principal of Sproston & Co at Bolton, Lancashire. From 13 August 2008 the Respondent's practising certificate became suspended because he had been adjudicated bankrupt.
2. On 13 October 2008 the SRA resolved to intervene in Sproston & Co on the grounds that the Respondent had been adjudicated bankrupt on that date and because he had not complied with the Solicitors' Accounts Rules 1998 by refusing to cooperate with the Forensic Investigations Officer's inspection of the files or accounting records at his practice of Sproston & Co.

Allegations 1, 2 and 8

3. The FIO's inspection began on 5 June 2008 and concluded on 27 August 2008. It had not been possible to calculate the level of the Respondent's liabilities to clients or the cash available in client account as when the FIO arrived at the appointed time at the Respondent's premises nobody was present. Subsequently she made contact with the Respondent on 9 June and arranged to meet him on 11 June. The Respondent could not supply the information that she requested about the financial position relating to the practice. The Respondent had agreed to have the documents ready for inspection by 16 June 2008. On that date the Respondent handed the FIO a letter stating that he was unable to meet with her and that his accounts would be drawn up to the end of June and submitted in accordance with the conditions placed on his practising certificate.
4. The FIO had contacted the Respondent's reporting accountants who informed her that the last Accountant's Report they had prepared related to the period ending on 31 March 2006. They held no records for the Respondent's firm.
5. The FIO wrote to the Respondent on 27 June requesting him to provide access to his accounting records but no reply was received to that nor to a chasing letter dated 15 July 2008.
6. The Respondent was declared bankrupt on 13 August 2008 at Bolton County Court.

Allegations 3 and 4

7. On 25 June 2008 solicitors representing Dr C contacted the SRA by letter explaining problems Dr C had experienced with the Respondent. The Respondent owed Dr C money in respect of unpaid professional fees for the provision of medical reports. On 30 June 2008 Judgment was entered against the Respondent's firm for £33,395.00 together with £8,180.34 interest plus costs; and required payment to be made by 29 July 2008. Dr C did not receive payment which led to the Respondent being declared bankrupt.
8. The SRA wrote to the Respondent on 4 August 2008 seeking an explanation of his conduct. He did not reply to that letter nor to chasing letters on 19 and 29 August.

Allegations 4 and 8

9. On 26 March 2008, RL Solicitors & Privy Council Agents, (RL), informed the SRA that in the course of acting for their client in the recovery of money owed by the Respondent under a personal credit agreement to finance the payment of professional indemnity insurance the Respondent had attempted to pay an instalment using a client bank account cheque. They had returned the cheque to him.
10. The SRA wrote to the Respondent on 23 May 2008 seeking his explanation of the circumstances. In the absence of a reply a chasing letter was sent on 9 June 2008.
11. On 12 June 2008, the Respondent wrote to the SRA stating that the cheque had been sent in error, was not cashed and had been stopped. In his oral evidence he confirmed he had stopped the cheque but he did not recall precisely when.

Allegations 5 and 8

12. The Respondent's accounting year for 2007 ended on 31 December 2007. He should have filed an Accountant's Report with the SRA by 30 June 2008. No such Report had been received.
13. After 31 December 2007 the Respondent became subject to a requirement to file Accountant's Reports with the SRA six monthly within two months of the end of the relevant accounting period. No Report for the period ending 31 August 2008 was filed.
14. The Respondent's practice was intervened on 16 October 2008 and an Accountant's Report for the period 1 July 2008 to 16 October 2008 had to be filed with the SRA by 16 December 2008. No such Report had been filed.
15. The SRA sent letters to the Respondent on 16 July 2008, 27 August and 12 September 2008. No reply was received. The SRA sent the Respondent further letters on 7 July and 29 September to which he did not respond.
16. The SRA wrote a further letter to the Respondent on 19 March 2009. No reply was received.

Allegation 6

17. On 29 January 2009 the SRA wrote to the Respondent seeking his explanation of an allegation that he had practised uncertificated. His practising certificate had been automatically suspended upon the making of the bankruptcy order against him on 13 August 2008.
18. Mrs A had complained that she had instructed the Respondent to pursue a claim for damages in a dental negligence claim in June 2007. In June 2008 the Respondent wrote to Mrs A to say his practice would shortly close but he had come to an agreement with M&S Legal to take over her case if she wanted to transfer her instructions.

19. Mrs A had been informed in writing on 15 August and 5 September 2008 that a hearing of her case would take place in the Northwich County Court on 15 September 2008 at 10.00 am. Mrs A and her husband took time off work to attend the hearing. On the day, after they had set off for the Court, Mrs A received a text message from the Respondent to tell her not to as the hearing had been “delayed”. Mr & Mrs A were almost at Northwich so they continued to the Court. They were told by an usher that no hearing in Mrs A’s name had been listed for that day. On leaving the Court they met the Respondent outside. He was dressed in casual clothes. He later told Mrs A that the hearing had been cancelled as the barrister was not available.
20. The Respondent visited Mrs A at her home later that day and at her request provided her with a case reference number. Mrs A made enquiries with the County Court Service and discovered that the case number was a valid one but the proceedings did not relate to her.
21. On 17 September the Respondent had telephoned Mrs A and had apologised for his actions. In a letter of the same date the Respondent wrote “
- “... I must firstly apologise to you unreservedly for my handling of your claim. There can be no excuse for misleading you and your husband with regard to the Court Proceedings ...
- ... I had fully expected our opponents to settle this matter (and I still expect them to do so) and rather than deal with this matter professionally I told you what I thought would keep you happy ...
- ... I admit that I have not given you the service that you deserve ...
- ... Liz asked me to deal with the file as part of the transfer process and I informed her that the claim was likely to settle in the very near future. She has been misled also ...
- ... Again I apologise to you and your family. My handling of this situation has been inexcusable ...”
22. On 18 September 2008 Elizabeth Milne of M&S Legal wrote to Mrs A apologising for the level of service she had received from the Respondent. Elizabeth Milne said that she was of the opinion that the claim had good prospects of success and was willing to enter into a conditional fee agreement with Mrs A. She also advised Mrs A that it was her intention to issue proceedings as soon as possible.
23. In her oral evidence Mrs A said that she had believed at all times that the Respondent was her solicitor, including the time when he contacted her via M&S Legal.

#### Allegations 7 and 8

24. On 4 March 2009 the SRA wrote to the Respondent seeking his explanation of allegations of misleading Mrs A.

25. The Respondent did not reply to the SRA's letter to him dated 4 March 2009 or to a chasing letter of 26 March 2009.

### **The Submissions of the Applicant**

26. In summary the Respondent acted contrary to most of the profession's core duties set out in the Solicitors' Code of Conduct. He led Mrs A to believe that her dental negligence claim was progressing; that court proceedings had been commenced, and that there was a hearing of her case on 15 September 2008. On that day the Respondent allowed Mrs A to inconvenience both herself and her husband by their travel to a fictitious court hearing at Northwich County Court, many miles from their home in Bolton. Following the discovery by Mrs A that no hearing had ever been listed for her on that day the Respondent perpetuated his deception by making representations that the hearing had been delayed, that a barrister was unavailable, and that another hearing would be fixed later in the week. He supported this deception by providing Mrs A with a false case number knowing it to be false in order to cover his own shortcomings. That amounted to dishonest conduct on the part of the Respondent.
27. In these circumstances the Respondent failed to act with integrity towards his client, failed to act in his client's best interests; and he diminished the trust his client placed in him and the solicitors' profession by his conduct.

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

28. The Respondent confirmed that he admitted all of the allegations save for allegations 4 and 6.
29. With regard to allegation 4, the Respondent accepted that he signed the client account cheque but he had stopped it when he realised he had made an error. The cheque had never been cashed and he had never intended that it should be cashed. All of the Respondent's previous accounting records were held by the SRA's intervention agents and he had not been able to provide any supporting documents.
30. The Respondent denied that he acted as a solicitor when his practising certificate had been suspended following his being adjudicated bankrupt. The SRA had immediately been aware of the Respondent's bankruptcy. It had been necessary and unavoidable that the Respondent should deal with the closure of his practice between the bankruptcy order of 13 August 2008 and the intervention into his practice on 16 October 2008. The Respondent had to contact his clients as the SRA did not do so. Clients of the Respondent continued to contact him. His having to deal with the clients in such circumstances was unavoidable but he did not act as a solicitor in his dealings with them. All clients, including Mrs A, had been advised in writing to seek alternative legal advice. When clients telephoned the Respondent he gave them the same advice. The Respondent had not given Mrs A legal advice after the suspension of his practising certificate nor taken instructions from her and he did not believe that either he or M&S Legal had a retainer with her. The Respondent denied that he had acted as a solicitor in his dealings with Mrs A.

31. The Respondent explained that the letter sent by the FIO making an appointment with the Respondent had not been received by him. He had been unable to meet with the FIO on 16 June 2009 on medical grounds and because he had an appointment with an insolvency practitioner on that day and a court hearing with regard to a charging order on his property on the following day.
32. The Respondent said that his accountants did hold records on behalf of his firm and pointed out that the FIO's report confirmed that the FIO had recovered information from them.
33. The amount of the doctor's claim for the provision of medical reports was in dispute. The judgment had been obtained only because the Respondent had submitted to it. He certainly owed less than the amount of the judgment and the Respondent disputed that he owed anything as his firm had instructed the doctor through a medical agency which had become insolvent. The Respondent simply did not have the financial resources or health to fight that and other debts that were claimed.
34. The bankruptcy petition against the Respondent had been submitted by an insurer following his failure to make payment of instalments. He had submitted to that application.
35. The client account cheque, the subject of allegation 4, was stopped by the Respondent himself and not by a third party. No third party had access to his client account.
36. The Respondent had not been able to afford to pay accountants to complete the outstanding Accountant's Reports. His accounting records were held by the intervention agents and it would now be impossible to prepare such Reports even if the Respondent were in a position to pay for them.
37. The Respondent accepted that he had not responded to letters addressed to him by the SRA.
38. The Respondent sincerely regretted the damage that his action had caused. His actions had not been deliberate but had been a result of intolerable stress and pressure caused by the Respondent's financial problems.
39. In retrospect, the Respondent's health problems started in mid 2007 when his financial position started to deteriorate. His business had collapsed in January 2008 when he became aware of a large debt that had not been paid by his office manager who had hidden a judgment. The Respondent had suffered 12 months of unbearable stress and could not carry on. He was signed off as unfit for work and placed on medication in June 2008.
40. The Respondent had sought advice about entering an IVA at some cost. He accepted that the closure of the business and the communication with the SRA had been handled badly. The Respondent's ill health played a role in this.
41. The SRA did not intervene until 4 months after they had become aware of the difficulties making it inevitable that he would have to deal with clients.

42. The situation with Mrs A was the Respondent's biggest regret and he accepted full responsibility for this. He accepted that his actions were dishonest, but he did not seek personal gain. The Respondent found Mrs A a difficult and demanding client and he misled her to get her "off his back".
43. Elizabeth Milnes of M&S Legal had no idea of the Respondent's actions. He had access to her office at that time as she had taken over his lease and was transferring some of his files. She had had her previously unblemished record tarnished by his actions. The SRA have investigated her practice purely on the basis of Mrs A's complaint.
44. The Respondent was extremely sorry for the upset he had caused Mrs A and Miss Milnes. He apologised unreservedly to both.
45. Miss Milnes was the Respondent's social partner and he was fortunate and grateful that she had stood by him.
46. The Respondent believed that he was a good solicitor and would have much to offer when he had recovered his health. He had before these events enjoyed an unblemished career.
47. The Respondent believed that he remained an undischarged bankrupt and that recourse would be made to his share in the equity in his home. (The Applicant had made enquiries and believed that the Respondent had been granted an automatic discharge from bankruptcy).
48. The Respondent apologised to the IFO for his apparent lack of cooperation.

### **The Tribunal's Findings**

49. The Tribunal found allegations 1, 2, 3, 5, 7 and 8 to have been substantiated, indeed they were not contested.
50. With regard to allegation 4 the Tribunal accepts the Respondent's explanation that he wrote and signed the cheque on client account in error and that he stopped the cheque when he realised the error. It is clear that the cheque was returned to the Respondent and never cashed. The Tribunal accepts that the Respondent made a genuine mistake. Client money was not as a result improperly utilised. The Tribunal therefore found allegation 4 not to have been substantiated.
51. In having contact with his clients after the suspension of his practising certificate and before the SRA intervened into his practice, a period of some two months, the Respondent had contact with his clients. The Tribunal did not accept the Respondent's explanation that he did not act as a solicitor in his dealings with them. In particular the Tribunal accepted Mrs A's evidence that she had believed when the Respondent was communicating with her that he was her solicitor and when she received communications from M&S Legal she considered that the Respondent was her solicitor. The Tribunal found allegation 6 to have been substantiated.



### Previous Matter

52. Following a hearing on 15 July 2008 and the Tribunal finding that the Respondent had breached Section 34 of the Solicitor's Act 1974 as he had failed to deliver promptly an Accountant's Report for the year ending 31 December 2006 and had ordered that the Respondent be reprimanded and pay the cost of and incidental to the application and enquiry, the Tribunal having found

“the allegation to have been substantiated and indeed it was not contested. The Respondent had admitted his failures and had put the matter right. He had given an honest account and was gracious in accepting his failings.

Whilst the Tribunal disapproved of any breaches relating to the Solicitor's Accounts Rules, they felt that the accounts had been produced in this case, albeit out of time and there had not been any irregularities therein. The Tribunal took the view that the Respondent had learned his lesson and there was no reason to add to his misery. He accepted the importance of the regulatory function of the Solicitors Regulation Authority and in the circumstances, the Tribunal considered that a reprimand was appropriate.”

### **The Tribunal's Sanction**

53. The Tribunal was dismayed by the catalogue of the Respondent's failures. It noted his admissions and his apologies. He sought to explain that he had suffered from ill health but had not placed any medical evidence before the Tribunal.
54. The most serious allegation made against the Respondent was that he was dishonest in repeatedly misleading Mrs A. This allegation had been admitted by the Respondent and although the other matters are serious it is this matter in particular which demonstrates that the Respondent is not fit to be a solicitor. The Tribunal mindful of its duty to protect the public and the good reputation of the solicitors' profession considered it both appropriate and proportionate to order that the Respondent be struck of the Roll.
55. The Applicant had sought the costs of and incidental to the application and enquiry and had provided a schedule of his costs. The Respondent had not been given time to give careful consideration to those costs and he had expressed concern about his position as an undischarged bankrupt, which has been dealt with above. The Tribunal concluded that it would be appropriate to order that the Respondent pay the Applicant's costs and in the circumstances ordered that such costs should be subject to a detailed assessment unless agreed between the parties.

Signed this 27<sup>th</sup> day of March 2010

On behalf of the Tribunal

Mr. A. N. Spooner  
Chairman