No. 10252-2009

IN THE MATTER OF NEIL A BASHIR, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs K. Todner (in the chair)
Mr. A. Gaynor-Smith
Mr. S. Marquez

Date of Hearing: 8th October 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 George Marriott, a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 8NL on 11th May 2009 that Neil A Bashir, solicitor, might be required to answer the allegations contained in the statement that accompanied the application together with the allegations contained in the supplementary statement dated 24th August 2009 and that such Order might be made as the Tribunal should think right.

The allegations against Neil A Bashir (the Respondent) were that he had:-

1. Breached an undertaking given to another solicitor, contrary to Rule 10.05 of the Solicitors' Code of Conduct 2007 (SCOC).

2. Provided misleading statements to another solicitor.

3. Failed to act with integrity contrary to Rule 1.02 SCOC.

4. Failed to act in his client's best interest, contrary to Rule 1.04 SCOC.

5. Failed to satisfy a county court judgement.

6. Signed a consent order in circumstances in which he knew, or ought to have known that he could not satisfy his obligations and in so doing had failed to act with integrity and had acted in a manner likely to diminish public confidence in the profession, contrary to Rule 1.02 and 1.06 SCOC.

7. Failed to deal with the SRA in an open prompt and cooperative manner contrary to Rule 20.05 SCOC.

8. Failed to deliver an accountant's report contrary to Rule 35 Solicitors Accounts Rules 1998.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the Applicant's exhibits to both statements. Other than letters to the SRA before the issue of the application, the Respondent had not engaged in the proceedings.

At the conclusion of the hearing the Tribunal made the following Order:
The Tribunal Orders that the respondent, Neil A Bashir, 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 £5,469.07

The facts are set out in paragraphs 1 - 49 hereunder:

1. The Respondent, born in 1971, was admitted as a solicitor in 1999. He does not hold a current practising certificate.

2. At the material time the Respondent practised on his own account as Parkers Solicitors/PI (PS/PI) Lawyers of Janero Chambers, 755-761 Attercliffe Road, Sheffield, South Yorkshire S9 3RF. The practice closed on 29th September 2008.

3. On 8th September 2008 the SRA had received a complaint from Blacks Solicitors ("Blacks"). The complaint had centred around NI, a former client of Blacks, in respect of his claim for damages arising out of a road traffic accident which had occurred on 1st October 2007.

4. Blacks had entered into, and had acted under, a conditional fee agreement with NI dated 11th October 2007.

5. However, NI had elected to transfer conduct of his matter to the Respondent's firm. The form of authority allowing Blacks to release NI's file to the firm had been signed by NI and dated 5th March 2008. The file had been eventually sent to the Respondent on 4th April 2008.

6. On 25th June 2008 NI had accepted an offer made by the third party insurers and had received his damages by cheque on 16th July 2008.

7. Blacks had claimed that the Respondent had breached an undertaking provided to Blacks on 12th March 2008 to preserve their lien on costs and also to report to them on the conclusion of the matter so that Blacks could claim for costs incurred during the time that they had had conduct of the matter. Furthermore, Blacks had stated that the Respondent had claimed, from the third party insurer, a disbursement, to which he had not been entitled, as part of his firm's claim for costs.

8. On 5th March the Respondent's firm had written to Blacks, enclosing a copy of the signed authority from NI, requesting that they forward NI's papers.

9. Blacks had responded to this letter on 11th March 2008 and had stated that:

> "We will of course forward copy papers, upon receipt of confirmation return of your undertaking to preserve our lien in respect of our costs and to contact us on conclusion of the case in order that we may have the opportunity to have the file returned to us to enable us to submit our claim for costs?"

10. The Respondent's firm had written back on 12th March and had confirmed:

> "We will preserve your lien of costs and will report to you upon conclusion so as to allow you to deal directly with third party(s) re: your costs."

11. On 4th April 2008 Blacks had sent NI's file to the Respondent and had stated that:

> "We trust that you will refer to us once the matter is complete, in order that costs can be dealt with accordingly."

The letter had gone on to confirm that Blacks had incurred disbursements in relation to an engineer's report for £80 and a medical report for £411.25.

12. Blacks had contacted the Respondent further on 13th May 2008 explaining that another file handler was now interested in NI's file and on 20th May 2008 had requested an update of progress. According to the Respondent, Blacks' file handler had been contacted on 14th May 2008 and a message had been left for that file handler to contact him for an update. No attendance note of this call had been provided.

13. On 16th July the Respondent had returned Blacks' file to "enable them to deal directly with third party(s) re: your costs." PS/PI had also reported that they had closed their file.

14. Blacks had written further on the matter on 21st July 2008 and had requested details as to the terms of settlement of NI's claims as well as the Respondent's break down of costs, reminding them that they had given an undertaking to preserve Blacks' lien and to report to them.

15. On 11th August 2008 Blacks had provided the Respondent with a breakdown of their costs incurred when they had had conduct of NI's matter; including disbursements

and VAT the total claimed had been £1,394.59. They had further noted that they had been informed, by the third party insurer, that the Respondent had already submitted a claim for a medical report, which Blacks had maintained they had been liable for and therefore had been entitled to claim.

16. Blacks had justified their own costs stating that they had done the majority of the work and that all that PS/PI had been required to do had been to disclose the medical report to the third party insurers and negotiate the settlement. Blacks had conduct of the file from October 2007 to April 2008; the Respondent's firm had conduct of the file from April 2008 to July 2008.

17. The Respondent's firm had written back on 12th August and had informed Blacks that the medical report fee claimed had been in respect of a supplementary report for which they had charged £160. They had referred to their earlier letter of 12th March stating that that letter had made their position clear.

18. Blacks had set out their position in a final letter to PS/PI on 28th August 2008. They had stated that the Respondent's undertaking to them had included preserving their lien on costs. This, Blacks had stated had extended to the Respondent being responsible to ensure that Blacks had received their costs. Blacks had further noted that the matter had been one where costs would have been dealt with under the predictive costs regime of CPR 45. They therefore had stated that they had been entitled to know how much the Respondent had recovered so that an agreement could be reached regarding apportionment, based on the amount of work carried out by each firm. The letter had concluded by requesting confirmation of the total profit costs recovered as well as a breakdown of the actual time spent on the matter so that apportionment could be considered.

19. Those details had never been provided and therefore Blacks had complained to the SRA.

20. The SRA had written to the Respondent on 23rd October 2008 asking him to provide explanations for the allegations made by Blacks that he had failed to fulfil his undertaking given on 12th March 2008 and that he had acted without integrity by claiming a disbursement that he had not been entitled to claim.

21. The Respondent had replied the next day and had stated that the firm wished to make a formal complaint about Blacks. The Respondent had stated that Blacks' letter of 11th March 2008 made it "absolutely clear" that Blacks would themselves recover costs at the conclusion of the case and submit their costs to a third party insurer.

22. The Respondent had stated that they had not breached their undertaking and considered that "Blacks themselves are responsible for how they choose to recover their fee." The Respondent had stated that his firm had sent back NI's files to Blacks on 16th July 2008 so that they could deal with their costs. However, from documents later provided by the Respondent, it was clear that when the file had been sent back to Blacks, the Respondent had already submitted their claim for costs under CPR 45, had received those costs from the third party insurer and had transferred those costs to office account. In this way they had left Blacks with no means to claim their costs from the insurer.

23. On the issue of the disbursement the Respondent had stated that the £160 fee they had recovered had been in relation to a medical report by Dr K invoiced on 15th January 2008. The Respondent had stated that the invoice and letter to Dr K enclosing payment had been attached to the letter. However, no copy had been provided. Furthermore, the Respondent had stated that the invoice claimed against was dated 15th January 2008, when Blacks still had conduct of the case.

24. Blacks had produced a letter from the third party insurer in which they had explained that only one medical report had been disclosed to them and they had received no supplementary report. They had stated that they had discharged a fee for the original report and had stated "you may need to contact PI Lawyers to re coup this...." The invoice for the original medical report post dated the invoice for the supplementary report as purported by the Respondent.

25. The Respondent had written to the SRA on 4th November 2008 and had stated that the statement made in their letter of 12th March 2008 had not amounted to an undertaking. The Respondent had further stated that Blacks letter of 11th March 2008 "made it absolutely clear, that upon us returning the file to them they would themselves recover their costs directly from the third party insurers" The Respondent had further stated that Blacks had had no basis or ground for their complaint.

26. The Respondent had confirmed that the cheque for NI's damages had been received on 10th July 2008. The Respondent's letter had also included a breakdown of costs claimed by the Respondent against Zurich Insurance in respect of NI's claim.

27. The breakdown was based on CPR 45 Part II, Road Traffic Accidents – Fixed Recoverable Costs and in the matter had amounted to:

Costs Fixed fee = £800
20% of damages less than £5,000 – in the case 20% of £3,508.75 = £701.75

In the matter damages had consisted of General Damages of £1,700; Special damages of £1,808.75 had consisted of £720 loss of use, £560 loss of earnings and £528.75 storage and recovery.

Success Fee of 12.5% costs

12.5% of £1,501.75 = £187.71

VAT (17.5%)

£295.65

Disbursements

£160 medical report

GRAND TOTAL = £2,145.12

Blacks' claim for costs including disbursements and VAT for 6 months work had been £1,394.59.

28. Following further correspondence with the SRA the Respondent had written and stated:

> "It is not accepted that any undertaking was given. A simple written intimation allowing an opportunity for another solicitor to recover their costs is simply an indication that the solicitor will be allowed that opportunity. In any event the solicitors were allowed that opportunity. No undertaking was given and none was sought."

Allegations 5 – 8

29. On 24th November the Legal Complaints Service (LCS) had received a letter of complaint from Cox Cooper Ltd Solicitors ("CC") on behalf of their client Dr W, who had provided expert witness statements upon instruction from the Respondent. The Respondent had failed to pay Dr W's invoices in relation to 9 matters totalling £2,780.

30. CC had enclosed a copy of the judgement obtained against the Respondent in the Wolverhampton County Court in the sum of £3,428.85 constituting the principal debt, plus interest, plus costs. The judgement, dated 7th November, had stated that the Respondent had until 21st November 2008 to satisfy the judgement.

31. Between March 2007 and April 2008 the Respondent had instructed Dr W to provide medical reports in relation to personal injury claims being conducted by the Respondent's firm. Dr W had sent the reports to the Respondent together with his professional invoices.

32. However, by June 2008 Dr W had instructed CC, due to the Respondent's firm failing to satisfy the 9 invoices. CC had been instructed to write to the Respondent which they had done on 23rd June 2008, threatening to issue proceedings if the debt had not been made good within 7 days.

33. The letter had admitted that the payment terms of the invoices, in all but one case, had been for payment of Dr W's fee on completion of the case. However, CC had stated that the matters in which Dr W had been instructed had been all relatively low value personal injury claims which would have concluded shortly after the preparation of the medical report. In some cases invoices had been fifteen months old. The invoice in relation to MG had had payment terms of 90 days. The invoice had been dated 30th July 2007 which meant that payment had been due on or before 28th October 2007.

34. The Respondent had failed to reply to the letter and so on 7th July 2007 CC had issued proceedings against the Respondent's firm. The claim had included the original debt, interest, court fees and legal costs and had totalled £3,132.51.

35. On 6th August 2008, the Respondent, as sole practitioner in the Defendant firm, had filed a defence to the claim, disputing the whole amount claimed. The Respondent had stated:

> "2. The Claimant was engaged by the Defendant to provide medical reports in respect of the Defendant's clients. 3. The Claimant failed to provide such medical reports in time and failed to provide reports of a type consistent with that expected of a professional medical report disbursement provider."

The Respondent had not defended the claim on the basis that the matters had not concluded and therefore no payments had been due under the terms of the invoices.

36. On 3rd October 2008 the Respondent had written to CC informing them that the practice had been closed. He had provided an alternative postal address for future correspondence.

37. CC had replied to the Respondent at the alternative address and had enquired as to whether the Respondent still defended Dr W's claim. The letter had also included a Consent Order which the Respondent had been invited to sign to prevent Dr W from having to attend the hearing listed for 7th November 2008. The letter had stated that if Dr W had been required to attend the hearing, they would have been applying to have the Respondent personally added as second defendant to the claim.

38. On 6th November 2008 the Respondent had signed a Consent Order agreeing to pay the Claimant £3,428.85. Interest and further court fees had increased the claimed amount.

39. On 7th November 2008 the court had Ordered that the Defendant pay the Claimant the sum of £3,428.85 on or before 21st November 2008.

40. On 17th November 2008 CC had written to the Respondent reminding him that the sum payable was due that Friday. CC had also highlighted the seriousness of the matter if the Respondent failed to pay the amount due, his having already claimed Dr W's fees from third party insurers. The Respondent had failed to comply with the Order and had failed to make the payment.

41. On 28th November 2008 the Respondent had written to CC in reply to their letter of 17th November. The Respondent had stated:

> "If payment has not been received then you should take whatever steps you feel appropriate through the avenue of the court for recovery."

42. On 2nd December 2008 the Respondent had been declared bankrupt in Sheffield County Court as a result of unrelated proceedings. However, the petition under which the bankruptcy had been Ordered had been dated 11th September 2008.

43. On 24th March 2009 the SRA had written to the Respondent at his last known address requesting an explanation for his actions. On 8th April that letter had been resent to the address provided by the Respondent to CC on 28th November 2007; the Respondent's old practice address.

44. On 5th May 2009 the SRA had sent reminder letters to both addresses. The Respondent had failed to reply.

45. The Respondent's practice of Parker Solicitors trading as PI Lawyers had closed on 29th September 2008.

46. On 17th June 2009 the SRA had written to the Respondent at his Bawtry Road address and had informed him that the accountant's report for the period 1st January 2008 to 29th September 2008 had not been received. The report had been due on 29th March 2009.

47. A further reminder letter was also sent on 6th June but no response was received.

48. The SRA had also written to an address in Scotland where the Respondent was believed to be residing, enclosing their previous correspondence and inviting a response. None had been received.

49. Despite those reminders, the Respondent had failed to deliver his accountant's report for the period 1st January 2008 to 29th September 2008 when the firm ceased to trade. The position and state of the Respondent's client account at the time he ceased trading was therefore unclear.

The submissions of the Applicant

50. The Applicant referred the Tribunal to the directions of 23rd June 2009 and confirmed that in compliance with those directions service had been effected by way of personal delivery of documents through the letterbox at 109 Bawtry Road, Sheffield S9 1UF, and by posting a copy of all the documents to the Respondent at Lakeview Nurseries and Garden Centre, Lonmay, Fraserborough, Aberdeenshire AB43 8SS. The Tribunal confirmed that it was satisfied as to service upon the Respondent and noted that he had not sought to engage with the proceedings.

51. In relation to allegations 1- 4 the Applicant submitted that the Respondent had been incorrect when he denied that he had given an undertaking. This was because Blacks' letter of 5th March 2008 had clearly stated that Blacks were only willing to release NI's papers having received an undertaking from PS/PI to preserve their lien in respect of Blacks' costs.

52. The Applicant submitted that the letter dated 12th March 2008 constituted an undertaking given by the Respondent for the following reasons:

    (1) A principal in a practice is responsible for fulfilling an undertaking given by any of his employees;

    (2) It is common practice that when one solicitor takes over conduct from another the incoming solicitor will give an undertaking to preserve the outgoing solicitor's right to costs;

    (3) SRA guidance states that an undertaking need not contain the word "undertaking" but it is merely a promise made by a solicitor that something will be done, or causes something to be done, or will refrain from doing

something and that promise is reasonably relied upon by the person receiving it.

(4) SRA guidance also states that any ambiguous undertakings would be interpreted in favour of the recipient.

The Applicant submitted that the undertaking given by the Respondent had meant that as conducting solicitor, the Respondent, would not take steps to prevent Blacks from obtaining their fair share of costs from the insurer. By claiming the full sum due under the fixed recoverable costs regime, the Respondent had prevented Blacks from being able to recover any costs from the third party insurers, who had satisfied their obligations. As such the Applicant submitted that the undertaking had been breached.

53. When Blacks had conduct of NI's case they had acted under a CFA. One of the terms of the CFA had been that if costs could not be recovered from the solicitor then the client would have been liable to pay the solicitor's costs. By claiming the full recoverable costs from the third party insurer, the Respondent had prevented Blacks from being able to obtain costs from the insurer. The Respondent's actions had therefore left his client with the liability for Blacks' costs and as a result of that the Applicant submitted that the Respondent had failed to act in his client's best interest.

54. The Respondent had returned the matter file to Blacks on 16th July 2008 and stated

> "As agreed, we return herewith your file of papers to enable you to deal directly with third party(s) re: your costs."

However, by this time, the Respondent had already submitted his claim for costs to the third party insurers, had received those costs, and had transferred them to office account. The Applicant submitted that the Respondent had misled Blacks by stating that the return of the papers would allow them to recover their costs when he had known that that would not be possible as he had already claimed, and banked all the costs recoverable, including the payment of a disbursement which had been the contractual liability of Blacks.

55. In relation to allegations 5 - 8 the Applicant submitted that as the bankruptcy petition must have been served upon the Respondent before he had signed the Consent Order to pay Dr W, the Respondent had known that if he were to be declared bankrupt the only means by which Dr W would have received any payment would have been to apply to the official receiver or insolvency practitioner. Moreover, the Respondent had failed to disclose the existence of the bankruptcy proceedings to CC. In the event, neither the petition nor the Consent Order had been satisfied.

56. In acting as he had the Applicant submitted that the Respondent had failed to act with integrity and had acted in a manner likely to diminish public confidence in the Profession. The Applicant submitted that the Respondent had signed the Consent Order knowing that he was unable to satisfy the bankruptcy petition and would therefore be unable to satisfy his obligations under the Consent Order.

57. The Applicant submitted that as no response had ever been received from the Respondent after 24th March 2009 to many letters from the SRA sent on multiple

occasions to multiple addresses, the Respondent had failed to deal with his Regulator in an open, prompt and cooperative manner.

The decision of the Tribunal

58. Having considered all the evidence, including the correspondence from the Respondent to the SRA in 2008, together with the helpful submissions of the Applicant, the Tribunal found all the allegations proved to the higher standard. Given the nature of the allegations, the Tribunal was satisfied that the Respondent presented a risk to the public if allowed to continue to practice. In all the circumstances, the Tribunal determined that the Respondent should be struck off the Roll of Solicitors and ordered to pay costs.

Dated this 3rd February 2010
On behalf of the Tribunal

Mrs K Todner
Chairman