

IN THE MATTER OF ANTHONY DAVID WILLIS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A. G. Ground (in the chair)
Mr L. N. Gilford
Mr J. Jackson

Date of Hearing: 3rd November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on 19th May 2009 on behalf of the Solicitors Regulation Authority ("SRA") by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill, 72-74 Fore Street, Hertford, Herts, SG14 1BY that Anthony David Willis, solicitor, 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 made against the Respondent were that:

1. He failed to keep his books of account properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998.
2. He failed to submit Accountant's Reports to the SRA for the periods ending 14th November 2007, 14th May 2008 and 14th November 2008 when the same became due, contrary to s.43 of the Solicitors Act 1974.
3. He failed to deal with the LCS and the SRA in an open, prompt and cooperative way, contrary to Rule 20.03 of the Solicitors Code of Conduct 2007.

4. He failed to comply with decisions made by Adjudicators, so behaving in a way likely to diminish the trust which the public placed in him or the profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.
5. He failed to comply with an undertaking or delayed unreasonably in so doing contrary to Rule 10.05 of the Solicitors Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd November 2009 when Stephen John Battersby, solicitor and partner of Jameson & Hill appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal

The evidence before the Tribunal included a Rule 5 Statement dated 19th May 2009 with accompanying bundle. The Tribunal also had before it copies of an email of 6th August 2009 from the Respondent containing two attachments dated 5th August 2009 and 23rd December 2008 and a letter attached to an email of 3rd November 2009.

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

The Tribunal Orders that the Respondent, Anthony David Willis, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of November 2009 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

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

1. The Respondent, born in 1961, was admitted as a solicitor in 1977 and his name remains on the Roll of Solicitors. At all times material to these allegations he was practising on his own account as ADW Solicitors, 98 London Road, Leicester, LE2 0QS until that firm closed in July 2008.
2. On 18th September 2008 Mr Roberts and Miss Townsend, SRA Investigation Officers, commenced an inspection of the Respondent's books of accounts and other documents at his home address. Their Report is dated 22nd December 2008.

Allegation 1

3. The Investigation Officers were unable to express an opinion as to whether the Respondent held sufficient funds to meet his liabilities to clients. An electronic reconciliation statement for 31st July 2008 listed the liabilities to clients as being £6,647.06. However in a file containing the firm's monthly client bank reconciliations statements there was a non-electronic version of the reconciliation statement for the same period which showed liabilities to clients of £8,881.89. The Respondent could not say which version of the reconciliation statement was correct nor why two versions had been prepared.
4. The inspection revealed other deficiencies in the way in which the accounts were kept:

- (i) the Respondent was unable to explain entries on the reconciliations statements described as "office Trfs to be posted". He said that his bookkeeper would have information about them;
- (ii) there had been a failure to write back uncleared cheques to client account;
- (iii) no record of client to office transfers was found and the Respondent could not explain how such a record was kept;
- (iv) on one file there was a credit on the office side of the ledger.

Allegation 2

5. As at 31st July 2008 the Respondent was holding monies on behalf of five clients totalling £6,647.06. He also had a separate client account holding the settlement monies on behalf of a client for whom he had been appointed as a professional receiver. This account held £185,046.47. The Respondent was still obliged, therefore, to file Accountant's Reports and because of a condition placed on his practising certificate by the Adjudication Panel on 29th August 2006, he was required to lodge reports every six months within two months of the end of the relevant accounting period. In his case, the periods ended on 14th May and 14th November each year.
6. The Report for the period ending 14th November 2007 should have been delivered within two months by 14th January 2008 but was not. On 13th June 2008 an Adjudicator directed that he should produce the missing report within 28 days of the date of the letter notifying him of the decision. The letter was sent out on 17th June 2008 and the report therefore fell due to be filed on 15th July 2008 but was not.
7. The Report for the period ending 14th May 2008 should have been filed by 14th July 2008 but was not. The Respondent was written to regarding this on 20th August 2008 but did not respond to this letter. The lack of this report was one of the issues addressed in the letter of 13th October 2008. This account, as well as that of the period ending 14th November 2008 remains outstanding.
8. On 28th January 2009 the SRA wrote to the Respondent seeking his explanation for his conduct. Apart from a holding e-mail on 11th February 2009 which failed to provide an explanation, he did not respond. On 11th March 2009 an authorised Officer of the SRA decided to add these matters into the existing proceedings.
9. The LCS had been dealing for some time with complaints raised by five of the Respondent's clients and wrote to him on 10th July 2007 (Mr NW), 9th February 2009 (Mrs JMA), 19th February 2009 (Mr DSR), 16th March 2009 (Mrs AE and 26th March 2009 (OL). No response was received to these letters and the Respondent was written to by the SRA on 16th March 2009 with a request for the relevant files to be sent to them. No response was received to this request.
10. It was not until 20th April that the SRA received e-mails from the Respondent relating to the matters raised, which included requests for information as to amounts held by

him in his accounts. He informed them that £99,796.26 remained in the receiver account and £1,803.50 in his client account. On 22nd April 2009 a solicitor acting on behalf of the Respondent wrote to the SRA urging upon them that no intervention was necessary. Despite this the panel resolved on 23rd April to intervene into his practice.

Allegation 3

11. Prior to the inspection the Respondent had been asked to explain a number of matters in letters sent to him on 20th and 21st August and 15th September. He did not respond to these letters and was written to again on 13th October 2008. He did not respond to this letter.

Allegations 3 and 4

Complaint by Dr K

12. In October 2006 the Respondent was acting for Doctor K in connection with a property transaction involving premises in Altrincham, Cheshire. Part of the instructions of Dr K were that the freehold of the property should be purchased on his behalf and the completion statement of 17th November 2006 reflected this. However in November 2007 Dr K received demands for the ground rent in connection with the property and subsequently discovered that the freehold title, contrary to his expectations, remained in the ownership of SP Ltd.
13. Dr K wrote to the Respondent on 20th December 2007 requesting that he take steps to deal with the problem. The Respondent did not do so and Dr K wrote to him again in January and February 2008 before complaining to the Legal Complaints Service ("LCS") on 7th March 2008.
14. The LCS wrote to the Respondent on 4th June 2008 requesting his written response to the complaint. No response was received and he was written to again on 13th June and the 23rd June. Again, no response was received.
15. On 24th November 2008 the matter was considered by an Adjudicator who directed the Respondent to pay £2,046.50 to Dr K as compensation for the financial loss caused by the inadequate service and £400 for the resulting distress and inconvenience. The Respondent was also ordered to pay the costs of the LCS in the sum of £840. The Respondent failed to comply with these decisions.
16. The SRA wrote to the Respondent on 26th February 2009 seeking an explanation for his conduct by 13th March 2009. No such explanation was received and on 27th March 2009 an authorised Officer of the SRA decided to add this matter into the existing disciplinary proceedings against the Respondent.

Complaints from Miss F and Mrs G

17. In 2006 the Respondent acted for Mrs G in connection with a conveyancing transaction. After completion she had expected to receive from him NHBC documentation and requested this. He did not send her the documents requested, nor did he respond to her correspondence and eventually Mrs G made a complaint to the

LCS. The Respondent was written to by the LCS on 23rd June 2008 but no response having been received, the matter was considered by an Adjudicator on 18th July 2008. He decided that the Respondent should pay compensation of £300 to Mrs G and return to her the NHBC documents.

18. Despite the decision of the Adjudicator, Mrs G did not receive either the missing documents or the compensation and the Respondent was written to on 28th July, 5th August, 21st August and 29th September 2008 without any result.
19. In June of 2006 the Respondent was handling an employment Tribunal claim for a client, Miss F. She made a complaint to the LCS about the way in which her matter had been handled by the Respondent after he had failed to deal with her concern. On 25th July 2008 an Adjudicator decided that the Respondent should pay £800 compensation to Miss F and return the file and papers to her within seven days.
20. Subsequently the Respondent was written to by the LCS on 26th August 2008 by the SRA and on 11th September and 2nd October 2008. He did not respond to those letters.
21. On 2nd October 2008 the SRA wrote to the Respondent regarding both Mrs G's case and that of Miss F. No response was received and he was written to again on 28th October 2008 with a request that he respond by 6th November. No response was forthcoming and the matter was referred to an Adjudicator who, on 1st December 2008, decided that the Respondent's conduct should be referred to the Tribunal.

Allegation 5

The Undertaking

22. On 28th April 2008 the Respondent issued instructions to a firm called LPC to issue a court appeal on his behalf as a matter of urgency. He undertook in writing to pay the court fee of £200.
23. LPC sent the Respondent their invoice dated 28th April 2008 incorporating the court fee and a fee for the issue itself - this amounted to £255.81. The invoice was not settled and the Respondent was written to by LPC on 30th May, 17th June, 23rd July, 6th August and 13th August 2008 without any result. LPC therefore complained to the LSC on 1st September 2008.
24. The matter was dealt with on behalf of the LSC by G LLP Solicitors who wrote to the Respondent on 9th October 2008 and again (this time to his home address) on 10th October 2008. No response was received to this correspondence and he was written to again on 27th October 2008, again without any response being received.
25. On 17th December 2008 the SRA wrote to the Respondent with a copy of the case notes which had been prepared regarding the case inviting a response from him. He did respond on 23rd December 2008 saying that he could not deny having made the undertaking and outlining the pressures and financial difficulties which he had been under. He said that he would pay the £200 to LPC as soon as he was able to do so. The matter was considered by an Adjudicator on 26th January 2009 and he decided that the conduct of the Respondents should be referred to the Tribunal.

The submissions of the Applicant

26. The Applicant indicated that the appropriate Civil Evidence Act Notices had been served upon the Respondent and that it was clear from the correspondence that the Respondent had sent into the Tribunal that he expected the case to be dealt with in his absence. The Tribunal consented to the case being dealt with in the Respondent's absence.
27. The Applicant stated that in his letter to the Tribunal dated 2nd November 2009 the Respondent had requested that he wanted his name to be removed from the Roll of Solicitors. However the Applicant indicated that no dishonesty was alleged and he did not consider the Respondent's name could just be removed from the Roll. The Respondent had made previous requests to have his name removed from the Roll but this could not be effected whilst investigations and matters before the Tribunal were still pending.
28. The Applicant asked for costs in the sum of £7,595.41, including the Forensic Investigation.

The submissions of the Respondent

29. The Tribunal had before it a letter from the Respondent dated 2nd November 2009, the day before the hearing. The Respondent stated in the letter that he had no wish to file a defence and wanted his name to be removed from the Roll. He had outlined in his correspondence his severely constrained financial circumstances and the reasons why he wished to have his name removed from the Roll in any event. He had not been able to work for well over a year and was in receipt of benefits. He had insufficient funds to pay for an Accountant's Report and represented that the fines and conditions that he had already been subjected to were disproportionate.
30. He asked the Tribunal to take into account his means and cited the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin). He further stated that he had no confidence in the profession and no longer wanted to be a part of it.
31. In addition the Respondent also cited the doctrine of proportionality concerning the fine and conditions to which he had already been subjected. In his submission there was no proportionality in the fine and this amounted to a disproportionate measure in relation to the legitimate aim pursued. He had not only been penalised by the fine but was also prevented from working to pay off the fine. He submitted that this was a double penalty. He reiterated his wish to be removed from the Roll of Solicitors.

The decision of the Tribunal and its reasons

32. The Tribunal in the absence of the Respondent and in view of the terms of his letter to the Tribunal dated 2nd November treated the Respondent's approach as a denial of the allegations. The Tribunal noted carefully the terms of his said letter and the points made in it concerning public interest disproportionality and rights issues.

33. The Tribunal were entirely satisfied that all of the allegations against the Respondent had been substantiated.

Previous appearance of the Respondent before the Tribunal

34. On 26th February 2008 the Tribunal had found the following allegations to have been substantiated against the Respondent:-
- (i) He had acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 22(1) he had drawn from client account monies other than in accordance with the said Rules and utilised the same for his own benefit.
 - (ii) He had acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 22(5) he had drawn from client account for the benefit of a client an amount which exceeded the money held on behalf of that client.
 - (iii) He had acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 32 he had failed to keep accounting records properly written up at all times to show his dealings with client money received and office money relating to client matters.
 - (iv) He had acted in breach of the Solicitors' Accounts Rules 1998 in that contrary to the provisions of Rule 7 he had failed to remedy breaches promptly upon discovery.
 - (v) That he had been guilty of conduct unbefitting a solicitor having transferred costs in the sum of £6,690.06 from a Receivership account to office account without having first had such costs assessed by the Supreme Court Taxing Office in accordance with an Order of the Court of Protection dated 7th September 2004.
 - (vi) He had provided misleading and/or inaccurate costs information contrary to Rule 1 and/or Rule 15 of the Solicitors Practice Rules 1990.
 - (vii) He had failed to disclose material information to his lender client.
 - (viii) He had completed a Certificate of Title which was misleading and/or inaccurate.
 - (ix) He had failed to ensure that a proposal form submitted in respect of professional indemnity insurance on behalf of the firm contained correct and accurate information.
 - (x) In relation to B & W Solicitors, he had failed to deliver an Accountant's Report for the period ending 31st March 2006 (due for delivery on or before 30th September 2006) contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

- (xi) In relation to B & W Solicitors, he had failed to deliver a Cease to Hold Accountant's Report for the period 1st April 2006 to 15th September 2006 (due for delivery on or before 15th November 2006) contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (xii) In relation to B & W Law LLP, he had failed to deliver an Accountant's Report for the period 7th April 2006 to 6th October 2006 (due for delivery on or before 6th December 2006), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (xiii) In relation to B & W Law LLP, he had failed to deliver a Cease to Hold Accountant's Report for the period 7th October 2006, to 15th November 2006 (due for delivery on or before 15th January 2007), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (xiv) He had failed to comply with an expectation and/or direction of an Adjudicator dated 29th June 2007, relating to the delivery of the Accountant's Report referred to in allegations (iv)-(xiii) above.
- (xv) In relation to ADW Solicitors, he had failed to deliver an Accountant's Report for the period ending 14th May 2007 (due for delivery on or before 14th July 2007), contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (xvi) He had failed to reply to correspondence from The Law Society.
- (xvii) He had failed to comply with the directions of an Adjudicator dated 10th July 2007 in relation to the matter of Mrs G.
- (xviii) He had failed to comply with the directions of an Adjudicator dated 7th August 2007, in relation to the matter of Mr M.

On that occasion on 26th February 2008 the Tribunal Ordered the Respondent to pay a fine of £15,000.00 and the costs of £17,000.00.

The Tribunal directed that the said directions made by Adjudicators be treated for the purposes of enforcement as if they were Orders of the High Court and as from 26th April 2008 the Tribunal further Ordered that the Respondent should not be permitted to practise as a solicitor save in employment and in a capacity which had first been approved by The Law Society.

- 35. On 3rd November 2009 the Tribunal noted that dishonesty had not been alleged against the Respondent and also noted that dishonesty had not been alleged or found against the Respondent in relation to the allegations substantiated on 26th February 2008.
- 36. However the allegations found substantiated, and the Respondent's conduct which gave rise to them, showed a catalogue of failure and abstention from duty which followed the previous catalogue of such failings found on 26th February 2008.

37. In view of this catalogue of failure to comply with his duties the Tribunal questioned whether the Respondent was a fit person to remain upon the Roll of Solicitors or be allowed to continue in practice given that he had repeated conduct that had previously been before the Tribunal. It observed that the Respondent had not offered any medical evidence concerning his current state of health. In the absence of the Respondent, and in the absence of any allegation of dishonesty, the Tribunal did not consider that removal from the Roll was appropriate but did conclude that a sanction should be imposed interfering with the Respondent's right to practise. In all of the circumstances, the Tribunal concluded that an indefinite suspension would be the appropriate sanction in this case.
38. The Tribunal also noted Mr Willis's current financial circumstances and the fact that he had no income apart from benefits. In that case in applying the principles in D'Souza, whilst the Tribunal found the costs applied for by the SRA to be reasonable, the costs to be awarded would be reduced from the claimed figure to the sum of £2,000.
39. The Tribunal Ordered that the Respondent, Anthony David Willis, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of November 2009 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

DATED this 9th day of March 2010
on behalf of the Tribunal

A. G. Ground
Chairman