

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DAVID MORRELL, (The Respondent)

Upon the application of David Barton  
on behalf of the Solicitors Regulation Authority

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Miss N Lucking (in the chair)  
Mr D Glass  
Mrs S Gordon

Date of Hearing: 12th August 2010

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**FINDINGS & DECISION**

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**Appearances**

Mr David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent did not appear and was not represented. The Tribunal had a letter before it from Richard Nelson Solicitors dated 6<sup>th</sup> August 2010 which explained that the Respondent would not be in attendance at the hearing for reasons of ill health. He intended no discourtesy to the Tribunal. The letter confirmed that Richard Nelson would not be representing the Respondent at the hearing although it was clear that that firm had represented him during the course of the proceedings and had been instrumental in providing a medical report and the Respondent's statement.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 16<sup>th</sup> November 2009.

**Allegations**

The allegations against the Respondent were that:-

1. He had breached Rule 1 of the Solicitors Practice Rules 1990 in each and all of the following respects:

- 1.1 He compromised or impaired his independence or integrity contrary to Rule 1(a). It was also alleged that he was dishonest but it was not necessary to establish dishonesty in order to prove the allegation.
  - 1.2 He compromised or impaired his duty to act in the best interests of his client Rule 1(b). It was also alleged that he was dishonest but it was not necessary to establish dishonesty in order to prove the allegation.
  - 1.3 He compromised or impaired his good repute and that of the solicitors' profession contrary to Rule 1(d). It was also alleged that he was dishonest but it was not necessary to establish dishonesty in order to prove the allegation.
  - 1.4 He acted for buyer and seller in a conveyancing transaction in breach of Rule 6(2).
2. Contrary to Rule 30 of the Solicitors Accounts Rules 1998 he made transfers of money from and to the ledgers of different clients in circumstances other than permitted by the said Rule.

### **Factual Background**

1. The Respondent, born in 1953, was admitted as a solicitor in 1977. His name remained on the Roll of Solicitors.
2. At all material times between 29<sup>th</sup> August 1986 and 31<sup>st</sup> August 2006 the Respondent was carrying on practice in partnership at Molesworths Bright Clegg solicitors (Molesworths) of Rochdale, Lancashire. Thereafter he was a consultant in Molesworths. In July 2007 the Respondent had been required to work at home following a complaint about his conduct by a member of staff. The Respondent was dismissed on 27<sup>th</sup> March 2008, such dismissal taking effect from 30<sup>th</sup> April 2008. The Respondent had not practised as a solicitor since then.
3. On 21<sup>st</sup> May 2008 the managing partner of Molesworths reported misconduct on the part of the Respondent to the SRA.
4. A Forensic Investigation Officer of the SRA (the FIO) commenced an inspection of Molesworths on 4<sup>th</sup> June 2008. The FIO's Report dated 14<sup>th</sup> August 2008 was before the Tribunal.
5. The FIO's Report recorded that the Respondent had, during the course of his having conduct of property sales relating to probate matters, misled his clients as to the marketing and purchaser interest in such properties; had sold properties to business associates and to friends where there was concern about under valuation; had not informed clients of his own financial interest in the purchase of property or that he was acting both for the seller and the buyer. He had made unauthorised transfers between his clients and had acted as banker for himself and for his business associates in family trust and related property matters, drawing cash from client bank account for his own use.
6. A partner in the firm told the FIO that the Respondent was poor administratively, that

he had “too many files” and that he “never closed files down”. He had refused help to clear the backlog and was very protective towards his files.

7. When on 4<sup>th</sup> January 2008 the Practice Standards Unit (PSU) served notice that a monitoring visit would take place at Molesworths on 12<sup>th</sup> and 13<sup>th</sup> February 2008, an assistant solicitor was appointed to work in the probate department to help with the archiving of the Respondent’s files.
8. The PSU Report advised Molesworths to review the Respondent’s files which contained a number of very old matters, some of which had credit balances on client account. As a result pressure was put on the Respondent to deal with these matters within three months; his failure to comply led to the termination of his consultancy.
9. On 25<sup>th</sup> June 2008 the FIO met with the Respondent’s wife and son and learned that while the Respondent was in hospital he had made handwritten notes which referred to certain conduct issues regarding a number of his clients and these were passed to the FIO. Neither of the notes was dated. The first was addressed to “the Partners of MBC” and was signed “David”. The second was addressed to “Whom this may concern” and was unsigned. The Respondent’s son confirmed that both notes were in the handwriting of the Respondent.
10. In summary the first note addressed to Molesworths’ partners stated “I am guilty of:- “misleading clients .... lying to clients .... using clients’ money ....”. It explained that in one case client money had been replaced with interest. He had misled clients about the value of their property so as to gain a personal advantage. He had not advised clients on conflict of interest where he had acted for both sides. He had said, “how to describe it, theft embezzlement, I am not sure .... I did these things .... for personal gain” and, “I am guilty of attempting to defraud the revenue ....”. He went on to state that his wife and sons were “totally ignorant of all this.”
11. In summary the second note said that the Respondent’s wife, apart from being a party to original documentation in one case, had been completely ignorant of, and did not have any involvement in, all financial matters. Neither of the Respondent’s children had any knowledge of the Respondent’s financial dealings. He said that his misdoing had not been on a large scale but it was clear that he had been dishonest for a very long time. He went on to say that he had no excuses and had to accept total responsibility for his actions even though it was difficult to believe that he was acting rationally when he did what he did.
12. The FIO had reviewed the Respondent’s client matters and established that the Respondent had acted in his own family trust matters which included the purchase of investment properties to provide income for the family. A client ledger in the name of the parents of the Respondent’s wife was open between 1992 and 2007 and recorded transactions in respect of an investment property from which rental income was used for the benefit of family members. The Respondent’s wife had no reason to question the Respondent’s actions in this connection.
13. Certain client matters referred to in the Respondent’s handwritten notes followed a similar pattern which was that the Respondent had conduct of a matter, acting for the executor and/or the beneficiary client, where a property had to be sold prior to final

distribution of the estate. He made arrangements to sell the property to a business associate or to a friend without first advertising it on the open market. The FIO's concern was that the Respondent therefore potentially arranged a sale at below market value. He did not fully advise his client and did not declare his interest in the property transaction thereby potentially misleading his client. If the purchaser did not have sufficient funds to complete his purchase the Respondent utilised funds held on unconnected client matters without informing those clients or he used funds from a family trust matter. The property purchased was held on trust for the benefit of the Respondent, his family, his business associates and/or his friends. Building or renovation works were carried out on the property which was then sold on at a higher price. The FIO exemplified four matters in which this pattern had been followed.

14. The FIO had been able to contact the Respondent on the telephone. On 18<sup>th</sup> June 2008, when he asked the Respondent if they could meet, the Respondent said that he was on medication and, "he did not know what he was doing from one day to the next". He added that he was isolated and "did not know what to do".
15. The FIO explained that the Respondent could have a representative with him and it was agreed that the FIO would make telephone contact again on 23<sup>rd</sup> June 2008 to give the Respondent time to decide how he wanted to proceed.
16. On 23<sup>rd</sup> June 2008 the Respondent told the FIO on the telephone that he was still waiting to receive legal advice on whether or not he should be represented at any meeting. The Respondent agreed to contact the FIO on 30<sup>th</sup> June 2008 but he did not do so.
17. The FIO telephoned members of the Respondent's family and received an email dated 3<sup>rd</sup> July 2008 from the Respondent's son stating that his father felt that "in his present mental and physical state he will be unable to meet with you." The Respondent confirmed this in a letter dated 4<sup>th</sup> July 2008 referring to his, "continuing difficulties with my nervous condition for which I am still undergoing treatment."
18. It was said on behalf of the SRA that the findings of the FIO were consistent with the handwritten notes made by the Respondent. The SRA recognised that the circumstances in which the Respondent had found himself were sad. It was, however, only after the facts upon which the Applicant relied in support of his allegations that the Respondent had been diagnosed as suffering from stress and mental ill health. No opinion had been placed before the Tribunal as to the state of the Respondent's mental health at the time of his misconduct. The Tribunal might properly, in the submission of the SRA, draw an inference from the facts that the Respondent had acted dishonestly.
19. The Tribunal had before it a written statement made by the Respondent dated 26<sup>th</sup> July 2010. In that statement he admitted the allegations but said in connection with allegation 1.4 that he was not aware that he had acted for both parties in conveyancing transactions and had no means of being able to prove otherwise but believes that other members of his firm acted in transactions where the firm was involved on both sides. He admitted that the correct procedures had not been followed however.
20. In the body of his statement the Respondent did not clearly admit that he had acted

dishonestly. In his statement the Respondent sets out in some detail his personal circumstances. The Tribunal has summarised these under the heading “Mitigation” below.

21. The Tribunal reviewed the following document submitted on behalf of the Applicant:-

The Forensic Investigation Officer’s Report.

22. The Tribunal reviewed the following documents submitted on behalf of the Respondent:-

The Respondent’s before mentioned statement.

A Medico-Legal Psychiatric Report prepared on 22<sup>nd</sup> February 2010.

Further documents submitted on behalf of the Respondent including a personal valuation and a testimonial.

## **Findings as to Fact and Law**

### Allegation 1

23. The Respondent had breached Rule 1 of the Solicitors Practice Rules 1990 in each and all of the following respects.

- 1.1 He compromised or impaired his independence or integrity contrary to Rule 1(a). It was also alleged that he was dishonest.

The Respondent had admitted this allegation but did not admit that he had been dishonest.

- 1.2 He compromised or impaired his duty to act in the best interests of his client Rule 1(b) where it was also alleged that the Respondent had been dishonest.

- 1.3 He compromised or impaired his good repute and that of the solicitors’ profession contrary to Rule 1(d) where it was also alleged that the Respondent had been dishonest.

The Respondent had admitted these allegations save that he had not admitted that he had been dishonest.

- 1.4 He acted for buyer and seller in a conveyancing transaction contrary to Rule 6(2)

The Respondent said that he was not aware that he had so acted but did not deny doing so. He admitted that the correct procedures were not followed.

### Allegation 2

2. Contrary to Rule 30 of the Solicitors’ Accounts Rules 1998 he made transfers

of money from and to the ledgers of different clients in circumstances other than permitted by the said Rule

The Respondent admitted this allegation.

24. The Tribunal had given the most anxious consideration to the documents placed before them which included the Respondent's statement and a Medico-Legal Report. The Tribunal accepted the Medico-Legal Report, which was not challenged by the SRA; that report indicated the writer's findings that the Respondent had suffered from an adjustment disorder with co-morbid features of depression and anxiety and it was likely that this condition began in the late summer or autumn of 2008 and was ongoing. It was not possible to say with exact certainty whether or not the Respondent suffered from a mental disorder at the time of the alleged misconduct. It was likely that he was at the time under significant stress both in regard to his home and his work circumstances. It was possible that this might have adversely affected his attention and concentration and might have impaired his judgment particularly with regard to how much work he took on. It was the writer's opinion that the Respondent was entirely able to understand the nature, seriousness and implications of the disciplinary proceedings. If matters were appearing before a Court he would be fit to plead and to stand trial.
25. The Tribunal found the facts set out above to have been established having noted in particular that the Respondent's own handwritten notes made available to the FIO were consistent with the FIO's findings when he inspected the Respondent's client matter files. The Tribunal had before it no evidence that could lead it to conclude that at the time when the Respondent took the actions upon which the allegations had been founded he did not know that what he was doing was wrong. The Tribunal has taken account of the fact that the Respondent's misconduct took place over a long period of time, starting in 1998 and going on into 2008.
26. The Tribunal had before it no evidence that at any time during that period of approximately 10 years the Respondent's mental condition was such that he did not know what he was doing or that he was unable to recognise wrongdoing.
27. In considering whether or not the Respondent had been dishonest the Tribunal applied the two part test set out in the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12.
28. The Tribunal found that in misleading clients, in particular about the value of their property and in order to gain a personal advantage, in not advising clients on conflict of interest where the Respondent (or his firm) had acted for both sides in the property transaction and where he had done such things for personal gain or for the gain of his family the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having given due consideration to the very full statement made by the Respondent and in the light of the above the Tribunal is satisfied so that it is sure that the Respondent did not have an honest belief that what he was doing was not contrary to his professional obligations or that he was acting in the best interests of his clients (rather he was acting in the best interests of himself, his family or his associates) and therefore that he knew that what he was doing was dishonest by those same standards.

29. The Tribunal found the allegations 1.1 to 1.4 to have been substantiated and in each case where dishonesty was alleged the Tribunal found the Respondent to have been dishonest. The Tribunal found allegation 2 to have been substantiated, indeed it was not contested.

### **Previous disciplinary proceedings before the Tribunal**

30. There had been none.

### **Mitigation**

31. The Respondent did not dispute the facts presented by the Applicant almost in their entirety. There was one matter where the Respondent had not used a client's money without his consent. In another matter where the Respondent assisted in the speedy sale of a property for a client who was under pressure to sell, he thought he was doing the client a favour and in another he acted entirely in accordance with his instructions. There had been little incentive in a further case to achieve the highest possible price as it would have required higher payments to a local authority for residential care.
32. At the time the Respondent's mental health had been very poor. His stress levels were very high and his professional standards had virtually disappeared.
33. In his statement the Respondent set out his difficult personal circumstances. His wife had over time suffered the distressing and debilitating effects of a condition that was identified as being of genetic origin. Her illnesses had begun when she was only thirty years of age when their two sons were young boys.
34. The nature of his wife's condition, its effects and the strain of knowing that their sons might have inherited it put enormous strain on the Respondent and his relationship with his wife. The Respondent resigned as managing partner in his firm due to pressure both at home caused by his wife's problems and at work as the firm was setting out on an expansion policy with which he was unhappy.
35. An additional stress factor occurred when one of the Respondent's sons began to have symptoms that might have indicated that he was suffering from the genetic condition.
36. The Respondent described his life as disintegrating around him and yet he could not discuss it with anyone as his wife had sworn him to secrecy about her condition. It did not dawn on the Respondent to see a doctor. He was clearly depressed, became more morose but was used to keeping things to himself and decided to get on with it on his wife's terms.
37. The Respondent's work life suffered quite badly. He was unable to concentrate as fully on work as he would have liked. There had been increasing pressure from within the firm to bill as quickly as possible to help fund the expansion.
38. The Respondent's department within the firm was one of those with the fastest cash turnover and he had been a leading fee earner and so he came under constant pressure at partners' meetings to bill matters as quickly as possible. Finding other work which did not generate fee income for some time led to a considerable increase in the firm's

overdraft and pressure from the bank with threats of drastic measures being introduced to deal with the situation.

39. The effect on the Respondent over several years was a cumulative build up of stress although he did not realise this at the time. Since the Respondent suffered a nervous breakdown he had tried to work out what had happened to him and had come to understand that it is very typical to be suffering from stress and be unaware of it.
40. The Respondent's sleep patterns had been badly affected for several years. He was completely unable to concentrate on work matters for any length of time and he found the only way of keeping files turning over was to work very long hours including at least one full day nearly every weekend. It was even more depressing to be in the office at the weekends and when members of other departments were not properly contributing to the firm's overheads but were only working normal hours. The Respondent prioritised current work at the cost of leaving older files uncompleted. The firm did not offer the Respondent support, although he accepted he was in part responsible for the firm's management.
41. The Respondent's family nightmare appeared to be over after 15 years, but unfortunately it did not have a positive effect on his health. Fortunately the Respondent's son's condition was diagnosed and did not relate to the genetic condition and in the early 2000s it was established that his wife's condition was no longer a matter for such serious concern. The Respondent began to realise the mess he was in. He retired as a partner and started to work a nominal four days a week in 2006. He no longer had proper secretarial support, had to take tapes and baskets of work into the office and then had to wait days for things to be typed. He had to check all the work online so that efficiency suffered even more dramatically and output went down. This was unsatisfactory to the firm and the Respondent.
42. He was still unable to concentrate for any length of time on anything complicated. He began to realise that his previous anxieties about his wife's condition had been very real but it seemed likely that they were going to prove to be unfounded. His son's problems had been resolved after five years of considerable anxiety.
43. The Respondent suddenly realised that over the previous few years, he had done things which were improper and he could not understand why. These things were out of character. He had come to realise that during the period when his wife was ill, he had been in such a mental mess that he would have done anything to safeguard his family against the possible consequences of the genetic condition and his judgment had been affected to such an extent that his former professional standards had fallen and that he had even become reckless as to the consequences. He hated the job. He hated what might have happened medically. He hated not being able to discuss it with anybody. He had not been able to believe what had been happening. Matters deteriorated into March and April 2008 as he could not come to terms with the events of some years ago involving clients and other personal events involving marital indiscretions arising from the pressure of the medical position and its effect on his wife. His nervous condition was deteriorating all the time and he confessed all to his wife in April 2008. She was a solicitor but she relinquished her practising certificate after the birth of their children and had become a probate clerk at another firm in Rochdale.



44. The Respondent ended up in hospital in a psychiatric assessment unit for 10 days and when he came out he went straight to Northampton to live with his mother as his wife made it clear that she no longer wished him to live with her.
45. The Respondent had been very ill for many months thereafter suffering from strong suicidal tendencies, depression, anxiety and panic attacks. Over the past twelve months he had begun to see an improvement.
46. The Respondent's source of income was incapacity benefit and a small amount of dividend income. He was now divorced and was still in negotiations with his former wife in relation to the divorce settlement.
47. Provided that his life could carry on, on a low key basis, the Respondent was able to function reasonably well. He had produced his statement in small chunks over a long period of time because of the stress it caused to him, as a result he was back on medication in an effort to stay calm.
48. The Respondent accepted that he had acted improperly. He had owned up to this and hoped this would be taken into consideration. He had acted properly with discretion and honesty for many years and had no claims against him or negligence claims for well over twenty years. He believed that he became unhinged as a result of his wife's medical condition and while under the pressure at work. He became totally disillusioned and his standards slipped. He believed that his firm had resolved all matters in question and he had made a substantial payment to the firm to do this.
49. Having become free of the worry and anxiety that work and family problems produced, the Respondent found it hard to believe what had happened and could only apologise to all concerned. He had no desire to practise again; indeed he did not believe that his nerves would ever permit this.
50. The Respondent had lost his job, his status, his wife and his life. He had made full recompense and invited the Tribunal to take these matters into account. The Tribunal was invited to have due regard to a testimonial written in the Respondent's support, the Medico-Legal Report and the Respondent expressed the hope that the Tribunal would feel able to adopt a lenient stand.

### **Sanction and Reasons**

51. The Tribunal recognised that this was a very sad case. The Tribunal recognised that the Respondent had been subjected to very considerable pressures and his mental health had suffered. However for the reasons set out above the Tribunal had concluded that in acting as he did the Respondent had behaved dishonestly. The Tribunal took into account the mitigation offered by the Respondent, gave him credit for the fact that he had engaged with the disciplinary process and had provided a detailed statement, a medical report and a full statement of his means. The Respondent had frankly admitted that his conduct had been unacceptable. The Respondent had asked the Tribunal to adopt a lenient stand, having indicated that it was not his intention ever again to practise as a solicitor.
52. The Tribunal was mindful of the fact that the protection of the public and the good

reputation of the solicitor's profession took precedence over the fortunes of an individual member of that profession. Mindful of its duty to protect the public and the good reputation of the solicitors' profession, having made a finding that the Respondent had acted dishonestly, the Tribunal concluded that it would in fulfilment of those duties make the decision that was both appropriate and proportionate and order that the Respondent be struck off the Roll of Solicitors.

### **Costs**

53. The Applicant told the Tribunal that he had discussed the question of costs with the Respondent's solicitors and it had been agreed that the Respondent would pay the Applicant's fully inclusive costs in the sum of £17,500.00. The Tribunal noted that an agreement had been reached between the parties and was happy to endorse that agreement by ordering the Respondent to pay the Applicant's costs fixed in the sum of £17,500.00.

Dated this 9<sup>th</sup> day of September 2010

On behalf of the Tribunal

Miss N Lucking  
Chairman