The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was withdrawn.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10519-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTHONY FULLER Respondent

Before:

Mr D J Leverton (in the chair)
Mr P Housego
Lady Bonham Carter

Date of Hearing: 12th December 2011

Appearances

The Applicant was represented by Mark Cunningham QC.

The Respondent did not appear but was represented by Gregory Treverton-Jones QC.

JUDGMENT

Allegations

The allegations against the Respondent were:

1.1 He conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007.

1.2 He conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.

1.3 He claimed falsely to have conducted work on client matter files when he had not done so and thereafter claimed payment in respect of such work to which he was not entitled.

1.4 He acted dishonestly.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 30 April 2010 together with attached Rule 5 Statement and all exhibits;
- Witness statement of Karen Hempstead dated 14 July 2010;
- Second witness statement of Karen Hempstead dated 10 November 2011;
- Witness statement of Alexander Burns dated 29 March 2011;
- Witness statement of Jamie Fisher dated 30 November 2011;
- Emails between Mr Havard and Mr Blatt dated from 14 November 2011 to 9 December 2011;
- Letter dated 18 November 2011 from Mr Havard to Mr Blatt;
- Applicant's Schedule of Costs.

Respondent:

- Witness statement of Anthony Fuller dated 5 April 2011;
- Response to the Rule 5 Statement;
- Letter dated 8 December 2011 from Dr Brian Wells;
- Letter from the Legal Services Commission to MacLaverty Cooper Atkins dated 23 November 2011;

- Emails between Mr Blatt and Mr Addy at the Legal Services Commission dated from 25 November 2011 to 5 December 2011;
- Letter from Mr Addy at Legal Services Commission to Mr Blatt dated 25 November 2011;
- A bundle of character references.

Preliminary Matters

3. The Tribunal was referred to a medical report submitted on behalf of the Respondent from Dr Brian Wells, Consultant Psychiatrist, dated 8 December 2011. The report indicated the Respondent had been suffering from stress related difficulties for several years and that his health had deteriorated in recent weeks. Dr Wells stated the Respondent was currently unable to cope with the rigours of trial and would not function under examination or cross-examination. He had advised the Respondent not to attend the hearing in person. Dr Wells was of the firm view that any such proceedings should not be delayed or adjourned as a result of the Respondent's absence. Any such delay was likely to cause a further deterioration in the Respondent's health. There was no application for an adjournment, however, the Applicant expressed the view that the Respondent's absence should be borne in mind when considering the evidence, particularly as the Respondent could not be cross-examined by the Applicant.

Factual Background

4. The Respondent was born on 3 July 1961 and was admitted to the roll on 15 November 1988. At the material time, the Respondent was a partner in the firm of Owen, White & Catlin of Gavel House, 90-92 High Street, Feltham, Middlesex, TW13 4ES ("the Firm"). He was currently employed as an assistant solicitor with MacLaverty Cooper Atkins of 25 Union Street, Kingston upon Thames.

5. On 27 March 2008, the senior partner of the Firm, Mr Alexander Burns, contacted the SRA to report the conduct of the Respondent in relation to claims for expenses and remuneration to which the Respondent was not entitled. On 10 June 2008 a Forensic Investigation Officer ("FIO") at the SRA carried out an investigation at the Firm and produced a report dated 30 December 2008.

6. The Firm had seven offices in the West London area in Addlestone, Ashford, Chiswick, Hammersmith, Hounslow, Shepperton and a Head Office in Feltham. The Firm undertook primarily criminal, family and civil litigation work. The Respondent was the partner in charge of the Criminal Department. Prior to his departure he was located at the Hounslow office but criminal work was conducted at all branches of the Firm.

7. The Firm had a General Criminal Contract with the Legal Services Commission ("LSC") under the framework of the Criminal Defence Service ("CDS"). Each CDS firm had to have an individual responsible for the management of their contract and the Respondent was that designated partner at the Firm. Approximately 90% of all the criminal work undertaken by the Firm was funded by the LSC.

8. Each criminal client would have a unique file number allocated to him/her and if that client had cause to instruct the Firm on more than one case, a new matter number would be allocated e.g. client unique file number 4470, matter number 3. Even if, on a particular case, different hourly rates applied depending on whether the client was being represented at the police station and then the Magistrates' Court, and thereafter on occasion the Crown Court, the same matter number would be retained throughout the process.

9. Work on each matter would be recorded on a CDS Form called a "Claim Cost Summary Sheet" ("Form CDS11") on which the entitlement to profit costs was graded in terms of sociable and unsociable hours, severity or complexity of work, and grade of fee earner. When an agent was used to attend a police station, agents' fees would be classified as disbursements. Each file would contain a completed CDS11 Form and a copy would be kept centrally for the purposes of completing the "Contract Work Report Form" ("Form CDS6"). The data contained on each Form CDS11 would be transposed onto a CDS6 Form which would then be submitted on a monthly basis to the LSC for payment. Accordingly, the CDS6 forms operated like invoices.

10. In addition, an internal bill would be drawn up by the fee earners concerned which would also be sent to the accounts department so that when a global cheque was received from the LSC, the correct amounts could be allocated to the appropriate client account. The internal bill would also contain information to determine whether the fee earner was entitled to claim for "overtime". On the internal bill a section referring to an "L" number indicated an out of hours overtime payment claim. The Firm operated an out of hours overtime payment scheme as an incentive to fee earners, which included partners and non-partners. Under this scheme, the fee earner concerned would be entitled to 50% of the amount recovered from the LSC for any out of hours work. Out of hours work was regarded as work between 6pm and 8am. Inevitably, this related to attendance at police stations and could allow a fee earner to earn an additional £100-£300 for each out of hours police station attendance.

11. A former partner at the Firm, LM, became suspicious of the Respondent's overtime claims after examining the Firm's annual accounts which showed a large number of payments being made to the Respondent. LM investigated the payments that had been made to the Respondent and produced an internal report which appeared to show that on at least 29 files, the Respondent had claimed overtime payments in respect of out of hours work which he had not personally undertaken. Examples of these were as follows:

    - In the matter of DM, all work undertaken on behalf of the client, including attendances at the police station, took place within normal office hours. The Respondent did not undertake any work on the file and did not attend the police station with the client out of hours. The internal bill on the file showed the Respondent as having claimed £292.36 plus VAT of £51.16, totalling £343.52, for which he personally claimed an overtime payment of £146.18.

    - In the matter of ROB, the majority of the billable work was undertaken by a solicitor called Jamie Fisher within office hours. According to an attendance note on the file the client was bailed to return to the police station on 11 May 2006 at 11:00. Although it could be inferred from that attendance note that an additional police station attendance within office hours took place on 11 May

2006, there was no evidence of any further attendances on the client, and nor was there any evidence of the Respondent attending that client outside office hours or at all. However the CDS6 Form submitted to the LSC referred to 2 police station attendances. The CDS11 Form referred to total attendances of 3 hours and 10 minutes. The majority of the billable work was conducted by Mr Fisher on the first visit which involved an attendance of two hours and 40 minutes. The internal bill raised by the Respondent on the file showed the Respondent claiming that he had undertaken work out of hours.

- In the matter of LP, an outside agent, JW, was instructed to attend a police station within office hours and the only evidence of any involvement by the Respondent was a telephone call. None of the documents on the file indicated any other involvement on the part of the Respondent. The internal bill suggested an attendance by the Respondent in which he claimed £93.74 plus VAT for an out of hours payment. The Respondent would have been entitled to one half of that amount, namely £46.87.

- In the matter of JM there was no record of any out of hours work being undertaken on this case by the Respondent and all the evidence suggested that the case was completed by an agent on one visit to the police station. Although it appeared the Respondent did not undertake any work on the file, the internal bill included a claim by him for an out of hours payment in the sum of £182.69 plus VAT. The Respondent would have been entitled to one half of that amount, namely £91.35.

- In the matter of QW, another lawyer at the Firm, NH, attended the police station with the client during office hours and the matter concluded after one attendance. This was confirmed by Form CDS6. However, the Respondent indicated in the internal bill that he had attended on an out of hours basis and claimed the sum of £137.84 for work that he had not undertaken.

12. There were a further 24 cases which illustrated a course of conduct on the part of the Respondent, where he claimed to have undertaken work on a particular client matter which led to claims for overtime payments being made, but there was no evidence that he had undertaken work out of hours on those files.

13. Once the investigation of LM, with the assistance of the Firm's Accounts Manager, Karen Hempstead, had been completed, Mr Burns and another partner at the practice had a meeting with the Respondent on 19 June 2007 when the overtime claims that the Respondent had made, and LM's report were raised with him. The Respondent handed in his resignation on 20 June 2007 and subsequently repaid monies that he had claimed from the Firm. There was no evidence to suggest there had been a loss of client monies, and nor were any instances discovered of other fee earners operating in the same way.

Witnesses

14. The following witnesses gave evidence:

- Alexander Morris Burns, Partner at Owen White & Catlin LLP

- Jamie Fisher, Partner at Owen White & Catlin LLP
- Karen Hempstead, Accounts Manager at Owen White & Catlin LLP

Findings of Fact and Law

15. The Tribunal had considered carefully all the documents provided, the evidence given and the submissions of both parties. The Tribunal confirmed that they would be using the criminal standard of proof when considering each allegation. The Tribunal had also been referred to a number of character references and, pursuant to the case of Donkin v The Law Society [2007] EWHC 414 (Admin) the Tribunal took these into account, in view of the fact that dishonesty had been alleged.

16. **Allegation 1.1: The Respondent conducted himself in a manner that was likely to compromise his integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007.**

Allegation 1.2: The Respondent conducted himself in a manner which was likely to compromise or impair the good repute of the solicitors profession contrary to Rule 1(d) of the Solicitors' Practice Rules 1990 and/or, where such conduct related to a period after 1 July 2007, Rule 1.06 of the Solicitors' Code of Conduct 2007.

Allegation 1.3: The Respondent claimed falsely to have conducted work on client matter files when he had not done so and thereafter claimed payment in respect of such work to which he was not entitled.

Allegation 1.4: The Respondent acted dishonestly.

16.1 The Applicant in his submissions had stated he relied upon six points which were as follows:

(i) Immediately after the meeting on 19 June 2007, when the overtime claims were raised with the Respondent, the Respondent refused to take a copy of the report prepared by LM and nor did he agree or disagree with the details of that report. The following day, on 20 June 2007, the Respondent resigned. The Applicant submitted that inferences could be drawn from the Respondent's behaviour.

(ii) The Respondent made no contemporaneous challenge to the claims of impropriety made against him.

(iii) The Respondent failed to challenge the proposed deduction to be made, from the amount to be paid to him under his entitlement under the Partnership Agreement, up to the end of June 2007. The deduction was £94,041 to cover repayment of the amounts over claimed and this was not an insignificant amount. The Applicant submitted this was not the reaction of a person who thought he was being falsely accused, particularly in view of the fact that the actual overtime payments claimed in the relevant cases appeared to be approximately £3,100.

(iv) The Respondent in his witness statement dated 5 April 2011 had stated he did not want to force an investigation from the SRA or the police, even though he was innocent and had not falsified claims. He stated giving up an entitlement to capital:

> "…would avoid the SRA and the potentially huge costs of an investigation both financially and emotionally. I just wanted out and wanted to make it as easy as possible… It was a convenient way therefore of resolving the matter and allowing me a way of moving on."

The Applicant submitted the Respondent had attempted to buy off the SRA proceedings by agreeing to a substantial reduction in the amount to be paid to him.

(v) The evident failure of the Respondent to engage at any stage with the process or complaint made against him. The Applicant submitted if the Respondent had a sustainable defence, it would be expected that he would be anxious to show that defence.

(vi) The Respondent was the Head of the Criminal Department and was therefore in control of the Department and in control of the billing process. In such circumstances, the Applicant submitted the Respondent had the opportunity to act in the way that he did and his conduct would have been difficult for the Firm to detect.

16.2 The Applicant had taken the Tribunal through a number of documents and files and it was clear to the Tribunal from those, that the Respondent had made claims for overtime payments for out of hours work, when there was no evidence of the Respondent having worked such overtime. In the Respondent's absence, the Tribunal could only proceed on the basis of the evidence before it and had to draw deductions from that evidence. The Respondent in his witness statement claimed that part of his supervision duties included attending police stations with solicitors and articled clerks. However, the evidence of Mr Fisher was that he had never been in a police station with the Respondent, and had never seen the Respondent in a custody suite in a police station, whether as a trainee solicitor or otherwise.

16.3 The Respondent's representative, Mr Treverton-Jones QC, had sought to show that it was possible the Respondent had attended at police stations on relevant days without his presence being recorded, perhaps on re-bail applications, or for supervision purposes, or for marketing purposes or to look after existing clients. On some of the files, visits had taken place over the weekend which would be regarded as overtime but the Tribunal noted there was no evidence that these visits had been done by the Respondent. Mr Treverton-Jones QC had taken the Tribunal through some files to show that there may have been more visits, or work carried out on client matters, than were recorded. However, again, there was no evidence that even if such work or visits had been carried out, it had been carried out by the Respondent.

16.4 In the matter of LP, the Tribunal had been referred to an attendance note dated 24 November 2004, which was claimed to be in the Respondent's handwriting. It was extremely difficult for the Tribunal to read the handwriting and the Tribunal was

asked to draw an inference from that attendance note that the Respondent had attended court on that date, which was a Saturday, and the case had been adjourned to 13 December 2004, but the Respondent had not claimed overtime for that attendance.

16.5 In the matter of S, Mr Treverton-Jones QC drew the Tribunal's attention to evidence of telephone calls made by the Respondent to the police late at night as evidence that more work had been done than evidenced by the claims made. In another matter of SW, the Tribunal's attention was drawn to another attendance note in the Respondent's handwriting dated 23 October 2004, which again was very illegible, as evidence that the Respondent had attended on a bail application on a weekend entitling him to overtime, which he had not claimed.

16.6 Mr Treverton-Jones QC submitted these possibilities could not be discounted and in such circumstances, the Tribunal could not be satisfied to the relevant standard that the case had been made out. He conceded the paperwork was not as it should be and that the Respondent's record keeping was not ideal. He also reminded the Tribunal that there had been an uninvited investigation into the activities of the Respondent by another partner of the Firm, of which the management of the Firm were entirely unaware, which in itself was unusual. The Respondent had made no admissions when confronted with the allegations and he was now in the unfortunate position that he was unable to give evidence or deal with these proceedings as a result of his medical condition. At most, Mr Treverton-Jones QC submitted allegation 1.2 could possibly be made out, absent any dishonesty.

16.7 The Tribunal had also heard a number of arguments in relation to the matter of disclosure. The Respondent's position was that he had tried to obtain full disclosure before committing himself to any answers and that he had requested supervision files which were not forthcoming. The Tribunal had heard from Ms Hempstead that any supervision records would have been made on individual client files. The Applicant's position was that full disclosure had been provided and the Respondent had failed to engage constructively with the process. This had made it difficult for the Applicant to identify the Respondent's defence or to understand what the Respondent's position was.

16.8 This was an unusual case as the Tribunal had been provided with a medical report dated 8 December 2011 stating the Respondent was suffering from stress and would not be able to attend before the Tribunal. However, the report also made it clear that proceedings should not be delayed or adjourned as a result, and that any delay was likely to cause a further deterioration in the Respondent's health. Mr Treverton-Jones QC acted on instructions to proceed in the Respondent's absence, and in absence of a detailed defence from the Respondent. He had done extremely well in such circumstances.

16.9 This matter had started with an investigation conducted by LM, whose findings were communicated to the Respondent in June 2007. Proceedings were issued by the SRA in April 2010 and it was clear to the Tribunal that the Respondent had known for a long time the nature of the allegations and the case against him. The nub of the case was that it was alleged the Respondent had dishonestly claimed payment for work carried out on client files when he had not done that work, and was not entitled to claim for it.

16.10 In the Tribunal's view, there had been an overall failure to engage with this case by the Respondent throughout these proceedings. The Respondent had given no full or frank explanation of what actually happened, and had blamed this upon a lack of proper disclosure of documents. However, the Tribunal noted that this matter had come before the Tribunal on 5 October 2010, 16 December 2010 and 2 June 2011. Directions were given dealing with further information and disclosure of documents and so far as the Tribunal was concerned, those directions were complied with as no further applications had been made for disclosure. This was against the Respondent's argument that he could not file a full defence until he had seen each and every document he requested. It was evident to the Tribunal that the Respondent had made blanket denials that were not fleshed out or further explained in an attempt to try and comply with the Tribunal's directions. In his witness statement of 5 April 2011, the Respondent had failed to address any of the specific cases referred to.

16.11 The Respondent was now unwell and unable to attend before the Tribunal however, the Tribunal was mindful that the Respondent had had since November 2009 to present his defence and had failed to do so. There was no evidence before the Tribunal that the Respondent had been unwell at that time and could not have dealt with these proceedings then. Indeed, the Tribunal also noted that until recently, the Respondent was working as a solicitor elsewhere.

16.12 The Tribunal had proceeded in the Respondent's absence and had the opportunity to see and hear from Mr Burns, Mr Fisher and Ms Hempstead. In the Tribunal's view, these witnesses were honest, straight forward and in no way did they alter or change their evidence on cross-examination. The Tribunal saw no reason not to accept their evidence in its totality which the Tribunal found to be entirely credible. In Ms Hempstead's statement dated 10 November 2011, she had dealt with 29 cases where it was alleged the Respondent had claimed overtime when he was not entitled to do so. Mr Treverton-Jones QC had done his best to try and throw doubt on some of those cases, but the Tribunal was satisfied that the Applicant's case had not been dented or compromised by any of the evidence given or the documents provided. The Tribunal had considered a number of cases in the documentation where it was quite clear that the Respondent had claimed overtime payments in circumstances which were not justified. In particular, on the matter of QW, the work had been carried out during office hours by another lawyer at the Firm and the Respondent had claimed an out of hours attendance for himself when he had not done any work on that file. Furthermore, there was no reference at all on the internal Bill to the lawyer, who was given no credit for the work he had done. In all the circumstances, the Tribunal was satisfied allegations 1.1, 1.2 and 1.3 were proved.

16.13 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

16.14 The Tribunal was satisfied that by the ordinary standards of reasonable and honest people, submitting a claim for overtime in circumstances where that work had not been carried out by the person making the claim would be considered to be dishonest. Furthermore, submitting such a claim which had the effect of enhancing that person's

income at the expense of his other partners, would be considered dishonest by the ordinary standards of reasonable and honest people.

16.15 The Tribunal was mindful that the Respondent was the partner in control of the Criminal Department including billing and he was in a position of trust. He had claimed overtime on cases where it appeared that work had been carried out by other staff during office hours and, therefore it was unlikely the fee earners dealing with those files would question or be aware of overtime claims being made. In such circumstances, the Tribunal was satisfied that the Respondent must have known that, by those standards to claim overtime, over a period of time, on files where other people had carried out the work during office hours, which would have the effect of enhancing his profit share at the expense of his other partners, exhibited a systematic course of conduct that would be regarded as dishonest.

16.16 The Tribunal had taken into account the impressive character references provided but found the evidence in this case overwhelming. All the allegations were found proved.

Previous Disciplinary Matters

17. None

Mitigation

18. As the Tribunal had found the Respondent had acted dishonestly, Mr Treverton-Jones QC did not propose to advance any mitigation, in view of the fact that the penalty in such circumstances was inevitable, and he did not believe he could persuade the Tribunal that this was an exceptional case.

Sanction

19. The Tribunal had considered carefully the Respondent's witness statement of 5 April 2011, which contained some elements of mitigation. The Tribunal had found the Respondent acted dishonestly and as a result of his conduct, his fellow partners had suffered losses, although the Tribunal noted these had subsequently been repaid by the Respondent. Nevertheless, these were serious matters and went to the very core of a solicitor's position of trust. The Tribunal was mindful of the case of Bolton v The Law Society [1994] CA in which Sir Thomas Bingham MR had stated:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal …… The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors".

20. The Tribunal also took into account the case of The Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) in which Mr Justice Coulson confirmed that where a solicitor was found to have acted dishonestly, only an exceptional case would justify a sentence of anything other than a strike off the roll. In this case, the Tribunal

did not find that there were any exceptional circumstances and accordingly Ordered the Respondent be struck off the Roll of Solicitors.

Costs

21. The Applicant requested an Order for the Respondent to pay his costs and provided the Tribunal with a Schedule of Costs which came to a total of £54,185.72. He accepted some reduction would need to be made to those costs as the hearing had not lasted as long as had originally been anticipated. The Applicant requested the Tribunal to summarily assess his costs. He also requested the Tribunal make an Order that the Respondent should make an interim payment towards those costs.

22. Mr Treverton-Jones QC confirmed costs could not be agreed and invited the Tribunal to Order a detailed assessment. He opposed any application for an interim payment to be made by the Respondent towards those costs.

23. The Tribunal having considered the submissions of both parties and the Schedule of Costs provided noted the costs had not been agreed and, given the amount claimed, Ordered that the Respondent should pay the Applicant's costs to be subject to detailed assessment if not agreed. No submissions had been made regarding the Respondent's ability to pay costs, and as the Tribunal had not been provided with any information or evidence of the Respondent's income, liabilities, capital or assets, the Tribunal made a further Order that the Respondent should make an interim payment of £15,000 towards those costs within 28 days.

Statement of Full Order

24. The Tribunal Ordered that the Respondent, Anthony Fuller, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties. The Tribunal further Ordered the Respondent make an interim payment of £15,000 towards costs, within 28 days.

Dated this 26th day of January 2012
On behalf of the Tribunal

D J Leverton
Chairman