

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF DAVID HUGH BARTLEY, solicitor (the Respondent)

Upon the application of Antony Thomas Basil Rider
on behalf of the Solicitors Regulation Authority

Mr D Green (in the chair)
Mr A Ghosh
Mr M Palayiwa

Date of Hearing: 27th January 2011

FINDINGS & DECISION

Appearances

The Applicant Mr Tom Rider, solicitor, of Field Fisher Waterhouse LLP, 35 Vine Street, London EC3N 2AA appeared on behalf of the Solicitors Regulation Authority ("SRA"). The Respondent appeared in person and was not represented. The application and Rule 5 Statement were made on 2 August 2010.

Allegation

The allegation made against the Respondent, Mr David Hugh Bartley, on behalf of the Solicitors Regulation Authority, was that:

1. Contrary to the provisions of Rule 1(a) and (d) of the Solicitors Practice Rules 1990, he had:
 - (i) compromised or impaired his independence or integrity;
 - (ii) compromised or impaired the good repute of both himself and the solicitors' profession,

as a consequence of having provided inaccurate and/or misleading information to another solicitor about the progress of his client's case.

Factual Background

1. The Respondent was born in 1963 and was admitted as a solicitor in 1992. His name remained on the Roll of Solicitors at the date of the hearing.
2. At all material times the Respondent practised as an assistant solicitor at Latimer Lee LLP, Manchester.
3. In February 2008, the firm of Hempsons Solicitors wrote to the SRA to complain that the Respondent, when practising as an assistant solicitor with Latimer Lee LLP and acting for a client on behalf of her child in potential clinical negligence proceedings had provided inaccurate and misleading information about the progress of his client's case to Mrs AC, a partner of Hempsons, in the course of various telephone conversations between April 2005 and May 2007. Following an investigation by the SRA this matter was referred to the Tribunal.

Witnesses

The Applicant relied on the Rule 5 Statement and exhibits.

The Respondent gave oral evidence in the course of which reference was made to a letter written on the Respondent's behalf by Gorvins Solicitors on 29 August 2008, which letter was included in the exhibits to the Rule 5 Statement.

Findings as to Fact and Law

1. The Respondent had admitted the factual matters put forward by the Applicant. However, he did not admit that he had been dishonest, and it was that issue which the Tribunal had to consider in detail.
2. The matters admitted by the Respondent, and found to be substantiated by the Tribunal, are set out below.
3. The Respondent began his employment as an assistant solicitor with Latimer Lee LLP in February 2004. He had been recruited to deal with a workload of clinical negligence cases. After taking up employment, the Respondent became aware that the firm did not have a supervisor, as required under the terms of the Legal Aid Franchise, and an external supervisor was not appointed until June 2004. In those circumstances, the Tribunal noted that many cases within the Respondent's workload had been "treading water" for some time. One of the cases with which the Respondent was to deal was for a client, Ms SB, in respect of a potential clinical negligence claim on behalf of her young child against an NHS Trust. The potential defendant was represented by Hempsons Solicitors. In about April 2004 Hempsons gave disclosure of the relevant medical records to the Respondent and in about August 2004 Ms SB was granted a Public Funding Certificate. Thereafter, the Respondent attempted to appoint an expert to produce a report on the issues of breach of duty and causation, but the experts approached were not able to assist. The

Respondent made attempts to contact his client to arrange an appointment. There was a delay in arranging an appointment as Ms SB was out of the country and cancelled an appointment made for February 2005 due to ill health. It appeared that thereafter Ms SB was out of the country again until a date in April 2005. At about that time Mrs AC of Hempsons took over conduct of the trial for the defendant NHS Trust. The factual basis of all the allegations against the Respondent arose from a series of twelve telephone conversations between him and Mrs AC between April 2005 and May 2007.

4. In the first telephone conversation, on 20 April 2005, the Respondent told Mrs AC that his client had public funding and he was expecting to receive an expert obstetric report in June 2005. The first part of that statement was true but the Respondent had not at that time instructed an expert in obstetrics to prepare a report.
5. On 30 June 2005 Mrs AC telephoned the Respondent and the Respondent informed her that: (i) he had received the expert report; (ii) a conference with counsel was scheduled for late July to discuss causation; and (iii) he expected to be in a position to serve a pre-action protocol letter of claim either at the end of August or the beginning of September 2005.

None of these three statements were true. The Respondent at that point had not instructed an expert, and had certainly not received a report. He had not instructed counsel or arranged a conference. The Respondent was not, therefore, likely to be in a position to serve a pre-action protocol letter by August or September 2005.

6. After several “chasing” letters and telephone calls in late 2005, Mrs AC telephoned the Respondent and spoke to him on 9 January 2006. The Respondent informed her that: (i) he had prepared a letter to her; (ii) since they had last spoken, he had received a supportive report on breach of duty; and (iii) a conference with counsel had been planned to discuss causation but his client had gone overseas for a four month holiday which prevented him from progressing the matter.

These statements were untrue in that the Respondent had not prepared a letter to Hempsons, no opinion on breach of duty had been obtained, he had not instructed counsel or planned a conference with counsel and he had had no contact with the client since about June 2005 and so was unaware whether she was in the country or not.

7. After several “chasing” letters and telephone messages between February and May 2006, Mrs AC spoke to the Respondent on 18 May 2006. The Respondent told her that: (i) he had dictated a letter to her; and (ii) there had been certain problems in re-arranging the conference with counsel because the client’s mother was ill, which had necessitated the client being out of the country for long periods; and (iii) the conference with counsel was re-scheduled for 30 May 2006.

These three statements were untrue in that no letter had been dictated or was sent to Mrs AC, he had made no arrangements for a conference with counsel on 30 May 2006 or on any other date and he had no knowledge of his client’s whereabouts as he had had no contact with her or her family for many months.

8. Having heard nothing further from the Respondent following that conversation, Mrs AC telephoned the Respondent again on 18 July 2006. On that occasion the Respondent told her that: (i) unfortunately his father had passed away and he had been away from work for a month; and (ii) a conference with counsel was now scheduled for 31 July 2006.

The latter statement was untrue as no conference with counsel had been scheduled for 31 July 2006, or for any other date.

9. In a telephone conversation on 18 August 2006 the Respondent told Mrs AC that the conference with counsel was re-scheduled for 4 September 2006. Again, this was untrue.
10. After several attempts to speak to the Respondent, Mrs AC again spoke to the Respondent on 29 September 2006. In that conversation the Respondent stated that: (i) he had dictated a letter to her; (ii) the conference with counsel had taken place on 4 September 2006; (iii) counsel had asked the causation expert to clarify further points that came up at the conference; and (iv) "off the record" the expert was not as categoric in the conference as in the report.

Again, these statements were untrue and misleading. No letter had been dictated or sent; the Respondent had not instructed counsel; no conference with counsel had taken place; no expert had been instructed or report obtained.

11. In a telephone conversation on 7 November 2006 Mrs AC telephoned and spoke to the Respondent. In that conversation the Respondent told her that: (i) the case might not proceed; (ii) he had sought counsel's advice on the further medical evidence obtained since the conference; (iii) he had an appointment with the client on 16 November 2006, and the client had been agitated by the prospect of not proceeding.

All of these statements were untrue and misleading as neither counsel nor an expert had been instructed, there had been no conference with counsel and although the Respondent had written to Ms SB asking her to make an appointment with him (on 20 October 2006), no appointment had been made nor taken place.

12. On 7 December 2006 Mrs AC spoke to the Respondent again. In that conversation the Respondent stated that: (i) the evidence obtained did not support the claim; (ii) the client remained agitated and due to language difficulties he had concerns about her level of understanding; (iii) he had arranged a further brief conference with counsel for 14 December 2006, possibly with an interpreter, in which he hoped to convey sensitively the reasons why the evidence did not support the claim; and (iv) thereafter he would leave it up to the LSC to consider whether to continue to fund the matter.

All of these statements were untrue and misleading. There was no evidence in the case, other than that the medical reports had been obtained in 2004. There had been no conference with counsel, no discussions with the client and there had been no conference with counsel arranged for 14 December 2006 nor for any other date.

13. On 5 January 2007 Mrs AC telephoned and spoke to the Respondent. In that conversation the Respondent told her that: (i) the conference with counsel in

December had had to be cancelled due to the client's daughter being ill; (ii) he was unhappy about the client's late cancellation; and (iii) the conference with counsel had been rescheduled for 26 January 2007.

Again, these statements were all untrue and misleading. There had been no contact with the client, and no conference had been arranged.

14. On 9 February 2007 in a telephone conversation the Respondent told Mrs AC that: (i); the conference with counsel had taken place; (ii) counsel had explained why the case should not proceed; (iii) the client remained unhappy and wanted a further meeting; and (iv) it was highly likely the case would not proceed but that the client was considering a change of solicitor.

Again, all of these statements were untrue and misleading. There had been no conference with counsel or advice from counsel, nor indeed any advice received. Further, the Respondent had had no discussions with the client about the case for at least a year.

15. As no update was received by Mrs AC thereafter, she telephoned the Respondent on 10 May 2007. The Respondent stated that: (i) he was waiting to bring the matter to a conclusion; (ii) the client was being aggressive and wanted to pursue the claim; and (iii) the client had asked him to write to the LSC to put her views, which he had done.

Again, these statements were untrue and misleading. The Respondent had not carried out any substantive work on the case since 2004, he had had no discussions with the client about the case for at least 18 months, he had not written to the LSC and the client had not asked him to convey any views to the LSC.

16. The Respondent left his employment with Latimer Lee LLP in June 2007 to take up a position with another firm.
17. The Tribunal was satisfied that the twelve conversations, in which misleading and untrue information had been given, had taken place as alleged by the Applicant.
18. The Tribunal had to consider whether this conduct was dishonest within the terms of the test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, in particular the test set out by Lord Hutton at paragraph 27 of the Judgment in which it is stated:

“Thirdly, there is a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.”

19. The Tribunal noted that it was for the Applicant to prove dishonesty beyond reasonable doubt.
20. The Tribunal had heard evidence from the Respondent, who had chosen to give evidence and be subject to cross examination. They had had the opportunity to observe his demeanour, from which it appeared that he was not able to handle stress

well. The Respondent had appeared to the Tribunal to be candid, not calculating. He had told the Tribunal that during the period in question he had been subject to both work and domestic stresses. He had not sought to use those matters as an excuse, as he accepted that what he had said was wrong and he should not have behaved as he did. The Tribunal was also told that the Respondent's father had died in May 2006, following an illness of approximately six or seven months. The Respondent had also had to deal with other family matters, involving his stepson, from about late 2004 until the spring of 2007 in particular. The Respondent had also told the Tribunal that as the clinical negligence work at the firm had not been generating enough fees, the Respondent had been required to undertake other sorts of litigation, with which he was less familiar and which had the effect of putting him under pressure e.g. contentious probate and a contested matrimonial case. Such matters had distracted the Respondent from dealing with this case.

21. The Respondent had admitted frankly under cross examination, that the statements he had made were deliberate lies but he had been unable to explain why he had made them. He had told the Tribunal that he did not set out to be dishonest and that he could not understand why he had said what he had to Mrs AC. The Respondent had told the Tribunal that what he had done was out of character. He was not in a position to bring to the Tribunal character references from members of the profession as he had not worked as a solicitor since 2008.
22. The Tribunal found that in making the statements he did to Mrs AC over a considerable period of time, and in the course of twelve telephone conversations, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondent give evidence, the Tribunal was not satisfied so that it was sure, that the Respondent did not at the relevant time realise that by the standards of reasonable and honest people his conduct was dishonest. Accordingly, the second part of the "combined test" set out in the Twinsectra case had not been met.
23. The Respondent had admitted that his conduct had been reckless, and the Tribunal found that the Respondent had been reckless, not dishonest. The Respondent's conduct was such as to compromise or impair the Respondent's independence or integrity and compromise or impair the good repute of both the Respondent and the solicitor's profession, contrary to Rule 1(a) and (d) of the Solicitors Practice Rules 1990.

Mitigation

24. The Respondent told the Tribunal that he had not previously been sanctioned by the Tribunal or professional regulatory body. It was not his intention to return to practice, and his practising certificate had lapsed after he last worked in legal practice in 2008.
25. The Respondent apologised to the Tribunal, the SRA and Mrs AC for what had happened. His conduct was something he regretted deeply. The Respondent had not been able to provide testimonials as he had not worked as a solicitor since 2008.

Previous disciplinary sanctions before the Tribunal

26. None.

Costs application

27. The Applicant sought an order for costs against the Respondent as set out in a schedule in which the costs claimed totalled £7,875.65. The schedule included an estimate of the length of today's hearing, which was in fact likely to be shorter than the estimate, and it was suggested that some allowance should be made for that. Subject to that change, the Respondent accepted that the figure claimed was reasonable.
28. The Respondent gave the Tribunal information concerning his financial circumstances, including a handwritten schedule of income and expenditure, supported by documents dealing with various debts and information concerning arrears on the Respondent's mortgage. The Respondent told the Tribunal that he was presently working for a part of the Civil Service, on a fixed term contract which had been extended to June 2011. It was not certain whether the contract would continue beyond that time.

Sanction and reasons

29. The Tribunal took a very serious view of the Respondent's conduct in providing a series of misleading and untrue statements to a fellow solicitor. In the course of those discussions, the Respondent had undermined his own client's case. The period of untruths had continued for over two years. It amounted to a disgraceful series of events, and the conduct was inexcusable in a solicitor and extremely damaging to the reputation of the profession.
30. The Tribunal had a duty to protect the public and to protect the reputation of the solicitor's profession. These considerations took precedence over all other matters, including the personal situation of a Respondent solicitor. Although dishonesty had not been found, the allegation made and proved was very serious indeed and in the circumstances the appropriate order was that the Respondent should be struck off the Roll.

Decision as to costs

31. The Tribunal had taken into account all of the information provided by the Respondent as to his circumstances. The Applicant's case had been properly brought and the costs claimed were reasonable. The Tribunal had made some adjustment to the costs claimed, as the hearing had been shorter than anticipated, and had applied a further reduction to take into account the Respondent's limited means. The Tribunal would thus Order the Respondent to pay the sum of £7,000, inclusive of VAT and disbursements.
32. The Tribunal Ordered that the Respondent, David Hugh Bartley, 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 fixed in the sum of £7,000.

Dated this 1st day of March 2011
On behalf of the Tribunal

D Green
Chairman