

IN THE MATTER OF JOHN KENNETH BOWEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mr. J.C. Chesterton
Mr. M.C. Baughan

Date Of Hearing: 16th January 1996

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by Geoffrey Williams, solicitor of 36 West Bute Street, Cardiff on the 25th January 1995 that John Kenneth Bowen of Wimbourne, Dorset 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. Further allegations were made in a supplementary statement dated the 11th April 1995. The allegations set out below were those contained in both the original and supplementary statements.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:-

- (a) breached a professional undertaking;
- (b) failed to pay Counsels' fees as they fell due;
- (c) failed to reply to correspondence from solicitors, either promptly, or at all;

- (d) failed to reply to correspondence from the Solicitors Complaints Bureau, either promptly or at all.
- (e) failed to deliver Accountant's Reports notwithstanding the terms of Section 34 of the Solicitors Act 1974 and the Rule made thereunder;
- (f) been guilty of culpable overcharging.

The application was heard at the Courtroom, No.60 Carey Street, London, WC2 on the 16th January 1996 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant. The respondent did not appear and was not represented.

The applicant had sent a letter by facsimile and post to the Clerk to the Tribunal. The letter was dated the 12th January 1996 and arrived by facsimile in the Tribunal's office at 5.25 p.m. on the evening of the 12th January 1996 (a Friday) and was not in the Clerks hands until Monday 15th January.

In his letter addressed to the Clerk the respondent said he had received the Clerks letter of the 11th January which he said was not sent recorded delivery as stated therein. He was unable to trace receipt of the Tribunals' letter of the 12th October 1995, a copy of which had been enclosed.

His purpose in writing was to ask for an adjournment of the hearing scheduled for the 16th January. He was unemployed and was unable to afford to travel to London during January.

Further he wished to seek Legal Aid to be represented and to defend the proceedings which he believed were unsubstantiated.

He enclosed a copy letter which he had written to the applicant and pointed out that there were a number of issues which he wished to raise although those set out were not an exhaustive list.

He requested that his letter be regarded as a formal application for an adjournment as he had not had sufficient time to organise his defence and representation. He said he had only on the day of writing the letter received papers from the applicant relating to their case which he had not seen previously.

The applicant pointed out that the letter from the respondent seeking an adjournment was the only letter received by the applicant during the whole of the proceedings. The Law Society had intervened in the respondent's practice in 1993. The letter to the respondent notifying him of the hearing had been sent by recorded delivery and in any event had been sent to the respondent's proper address.

Legal Aid was not available for proceedings before the Tribunal and he respondent had had plenty of time to find that out.

The respondent indicated that he wished to defend the allegations, but the letter only just received was the first indication that that was the respondent's intention. The applicant,

because he had not received any indication as to the respondent's position, had to take steps to prove his case and there were a great many necessary documents before the Tribunal.

The respondent's complaint that he had only just been served with documents was inappropriate as in fact the papers sent to him had included a copy of his own file, a document of which he must have been very well aware.

In the respondent's letter addressed to the applicant the respondent suggested that the Tribunal would be disadvantaged because only part of the T deceased file was available. The original file, which was with the applicant and could be placed before the Tribunal had come to the applicant from the respondent's successors. The applicant could not prove a negative, he could not prove that that bundle of papers did represent the whole file relating to that particular matter.

Notices had been served upon the respondent under the Tribunal's own Rules of procedure and the Civil Evidence Act. No counter notices had been served.

Some two and a half years had passed since the Law Society had intervened in the respondent's practice. The Tribunal was invited to see the respondent's application as something of a smoke screen and to take the view that the application was hopelessly late. The respondent was not before the Tribunal to make his application. Up to the days immediately before the hearing the respondent had conducted the matter by presenting a complete wall of silence. The supplementary statement contained the more serious allegations and had been served upon the respondent and had evoked no words of protest.

The Tribunal, having considered the matter, decided that they would proceed to a full hearing and would refuse the application for an adjournment.

The evidence before the Tribunal included all documents which had been made the subject of the notices referred to above and exhibit "JKB1" (a breakdown of the Investigation Accountant's costs).

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Kenneth Bowen of Wimborne, Dorset, BH21 solicitor be Struck Off the Roll of Solicitors and they further Ordered that do pay the costs of and incidental to the application and enquiry fixed in the sum of £9,363.96 inclusive.

The facts are set out in paragraphs 1 to 19 hereunder.

1. The respondent, born in 1950, was admitted a solicitor in 1974. At the material times he was a sole practitioner under the style of Bowens at 58 The Grove, Christchurch and for a time in partnership under the style of Bowen Smart at the same address. He ceased to practise on or about the 12th October 1993.
2. The respondent acted for the vendors of a property at Poole. Messrs. James Bowie Caton & Co. solicitors of Ferndown, Dorset acted for the purchasers. The transaction was completed on or about the 3rd April 1992.

3. On the 2nd April 1992 the respondent wrote a letter to the purchaser's solicitors giving a professional undertaking to withdraw a restriction which appeared on the property's title. Subsequent to completion Messrs. James Bowie Caton & Co. wrote to the respondent expressing concern about his failure to have the restriction removed. The respondent failed to reply to their letters of which there were nine, the first being dated the 1st May 1992 and the last being dated the 26th November 1992. Messrs. James Bowie Caton & Co. complained to the Solicitors Complaints Bureau (the Bureau) by letter dated the 8th December 1992.
4. The Bureau wrote to the respondent seeking his observations. He failed to reply to their letters of the 10th and 23rd February 1993. A similar letter of the 9th June did not receive a reply until the 27th July 1993. The respondent secured the withdrawal of the restriction in or about September 1993.
5. The respondent instructed Counsel in several privately funded matters. The Tribunal had before a bundle of copied fee notes and fees collection report forms in respect the total of fees which remained unpaid was £5,853.88 which were due to Mr. Barton of Counsel. The Tribunal also had before it a bundle of copies of similar documents relating to the fees of Mr. Swift of Counsel in a privately funded case which had not been paid by the respondent.
6. The General Council of the Bar complained to the Bureau which wrote to the respondent seeking his observations. The respondent did not reply to 11 letters addressed to him by the Bureau. The first dated the 6th March 1992 and the last the 6th September 1993.
7. The respondent acted for Mr. K in matrimonial proceedings. Mr. K complained to the Bureau about the quality of service provided to him by the respondent in respect of which the Bureau wrote to him seeking his observations in five letters, the first dated the 10th May 1993 and the fifth dated the 30th July 1993. The first letter that the Bureau received from the respondent in that matter was dated the 16th September 1993 purporting to be in reply to the Bureau's letter of the 10th May 1993.
8. The respondent acted for MPS Ltd in litigation matters. In due course MPS Ltd complained to the Bureau about the respondent 's conduct of the matters. The company instructed Messrs. Lamb & Smart, solicitors of New Milton, Hampshire in succession to the respondent. Mr. Smart of that firm had initially been instructed by MPS Ltd when he had been a partner of the respondent.
9. By September of 1992 Messrs. Lamb & Smart had received the respondent's files relating to the litigation matters. It was apparent that the taxation of costs in the client's favour had been outstanding for some time with the risk of substantial costs being disallowed for delay. There were omissions in the bill for taxation itself. Messrs. Lamb & Smart wrote to the respondent for the necessary information to enable the taxation properly to proceed but the respondent did not reply with such information.

10. In the course of the MPS Ltd matter the respondent failed to reply to eight letters from the Bureau, the first dated the 9th January 1992 and the last in the sequence dated the 18th August 1993.
11. The respondent acted for a Mr. B of Upton-on-Severn, Worcestershire in various matters. They also had a business relationship. Subsequently Mr. B instructed Messrs. Russell & Hallmark solicitors of Worcester. Both that firm and Mr. B complained to the Bureau about the respondent's conduct. The Bureau wrote to the respondent seeking his observations about the complaints. Four letters were written beginning with that on the 16th March 1993 and ending with that on the 19th July 1993 to which the respondent failed to reply.
12. The respondent's Accountant's Report for the year ended the 31st July 1993 was to have been delivered to the Law Society by the 31st January 1994. It had not been delivered. The respondent ceased to practise as a solicitor on the 12th October 1993 and was accordingly obliged to deliver an Accountant's Report covering the period the 3rd August to the 12th October 1993. Such report was to have been lodged by the 12th April 1994. The respondent had failed to lodge such report.
13. Upon notice duly given to the respondent an inspection of his books of account was carried out by an Investigation Accountant of the Law Society. A copy of the Investigation Accountant's report dated the 26th August 1993 was before the Tribunal.
14. That report revealed that the respondent's books did not comply with the Solicitors Accounts Rules. A list of liabilities to clients as at the 30th June 1992 was produced for inspection and totalled £133,301.93. The items were in agreement with the balances on the client ledger and an equivalent amount was held in client bank account at that date, after allowance for uncleared items. However a further liability to one client, of £35,202.88 existed which was not shown by the books. The inclusion of that further liability increased the total liabilities to £168,504.81. A comparison of that figure with cash available revealed a cash shortage of £35,202.88.
15. The cash shortage was caused by the improper transfer of funds from client to office bank account in respect of the account of T Deceased. The respondent had told the Investigation Accountant that he was unable to replace the cash shortage at the time of the inspection.
16. The respondent was the sole executor in the estate of T Deceased who died on the 20th February 1992. The estate was valued for probate purposes at no greater than £100,00.00 net and the residual beneficiaries were two charities. By the 23rd November 1992 estate funds totalling £86,815.12 had been received and properly lodged in client bank account.
17. During the period 16th April 1992 to 23rd November 1992 the relevant client's ledger account had been charged, inter alia, with nine transfers from client to office bank account varying in amount between £1,500.00 and £8,812.50 and totalling £35,202.88. The charging of those items to the client ledger account contributed to the reduction of the balance thereon to £5,177.91 by the 23rd November 1992.

18. The respondent explained to the Investigation Accountant that those transfers were made on account of costs. He did however admit that the transfers were improper as no bills or other written intimation of costs had been raised or delivered. That remained the position at the inspection date.
19. The Tribunal also had before it a copy of the ledger card relating to the T Deceased matter which revealed a receipt from office account on the 15th September 1992 of £34,974.88 with a transfer from client account in respect of which the narrative was "transfer fees". The Tribunal also had before it a copy of the respondent's bill of costs dated the 14th September 1993 in respect of which the respondent's profit costs were stated to be £29,600.00. The total bill of £34,974.88 included disbursements of £422.88 (which of itself included postage of £15.50) together with Value Added Tax calculated at 17.5%.

The Submissions of the Applicant

20. The Tribunal had sight of the respondent's original file of papers in connection with the T Deceased matter. The bundle of correspondence was not particularly large, possibly about one inch in depth of paper. It was the applicant's position that the most serious allegation was that which concerned the respondent's activities in connection with the estate of T Deceased. He was sole executor and thus a controlled trustee. It was clear that the respondent had been culpable of serious overcharging. The Tribunal was invited to take the view that the Transfer of large sums of money from client account to office account in such instances amounted to dishonesty. Such transfers could not be excused as over optimistic anticipation of costs. This matter fell into a different realm. The respondent had indicated that he did not consider the transfers to be excessive and he wasn't in breach of Rules 7 and 8 of the Solicitors Accounts Rules. He said that because he was the sole executor he had not sent himself a bill. The respondent had in fact drawn a bill having paid the monies back to client account and had transferred them against the bill in order "to put things right". The effect of the overcharging and improper transfer of funds was to deprive charitable legatees of monies properly belonging to them.
21. After the Tribunal had found all of the allegations to have been substantiated against the respondent the applicant indicated the position existing at the date of hearing on the Law Society's Compensation Fund. There had been 36 applications to the Compensation Fund. The total paid out had been £69,178.19. A subvention grant had been made to the successor practice representing a refund of the T Deceased estate costs. There were pending claims totalling £57,256.12. The costs of the intervention were £5,960.46.
22. With regard to the allegation that the respondent had been in breach of a professional undertaking, it was accepted that he had eventually complied with that undertaking but in the submission of the applicant the undertaking was to secure the withdrawal of the restriction at the time of the completion of his clients' sale or at any event within a reasonable time of completion having regard to the nature of the undertaking. By failing to secure the withdrawal for over 16 months the respondent had been in breach of his undertaking. Further because of the undertaking given, the respondent had a duty in conduct to reply to letters about the undertaking addressed to him by Messrs. James Bowie Caton & Co.

23. The respondent owed considerable sums of money in Counsels' fees. Some of them went back as far as 1988. The respondent had ignored eleven letters from the General Council of the Bar. It was understood that Counsel had been paid some money from the Law Society's Compensation Fund, however some fees had been written off.
24. The respondent had ignored a great many letters addressed to him by the Solicitors Complaints Bureau. It was well known how seriously the Tribunal regarded failure to respond promptly and fully to letters addressed to a solicitor by his own professional body. The respondent had replied to some letters but there were a great many which he had ignored.
25. The Tribunal was invited to note that the respondent had been in breach of Section 34 of the Solicitors Act 1974 and the Rules made thereunder in respect of his Accountant's Report which should have been delivered to the Law Society by the 31st January 1994 and in respect of a "cease to hold" report which should have been delivered by the 12th April 1994.

The Tribunal FOUND the allegations to have been substantiated. The Tribunal regard the cynical use of monies in an estate where the respondent was himself the testatrix's sole executor and his attempt to make matters appear to be in order by drawing a bill and effecting book transfers represented a course of conduct which the solicitors' profession would not tolerate. The Tribunal believed it was entitled to draw an inference of dishonesty from such activities and the Tribunal Found that the respondent's activities had, indeed, been dishonest. In finding the allegations to have been substantiated not only were individual matters to be regarded with the utmost seriousness but, of course, the cumulative effect of all matters of complaint about the respondent led them to conclude that the proper sanction to be imposed upon the respondent was that of Striking Off and further Ordered the respondent to pay the costs of and incidental to the application and enquiry to include the costs of the Investigation Accountant of the Law Society.

DATED this 26th day of February 1996

on behalf of the Tribunal



D.J. Leverton
Chairman



