

IN THE MATTER OF PHILLIP BRADSHAW, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G.B. Marsh (in the Chair)
Mrs. E. Stanley
Mr. R.P.L. McMurtrie

Date Of Hearing: 5th October 1995

FINDINGS

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

An application was duly made on behalf of the Law Society by Gerald Malcolm Lynch, solicitor of 16 Warrior Square, Southend-on-Sea, Essex on 5th April 1995 that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor should, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Phillip Bradshaw of Blackpool a person who was or had been a clerk to a solicitor or that such other Order might be made as the Tribunal should think right.

The allegation was that the respondent, having been a clerk to a solicitor but not being a solicitor, had in the opinion of the Law Society occasioned or been a party to with or without the connivance of the solicitor to whom he was or had been a clerk, an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his practice.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 5th October 1995 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdales & James of 16 Warrior Square, Southend-on-Sea, Essex appeared for the applicant and the respondent did not appear and was not represented. The respondent had however, sent a letter by "fax" which had been received in the Tribunal's office shortly before 10 p.m. on 4th October 1995. That letter was dated 4th October 1995 and is referred to hereunder.

The evidence before the Tribunal included the oral evidence of Mr. Alfred Chappell, Mr. Kenneth John Fawcett and Mr. Charles James Purvis. In his fax letter of 4th October 1995, the respondent denied the allegation and the facts.

At the conclusion of the hearing the Tribunal FOUND the allegation to have been substantiated and Ordered that the respondent be subject to an Order made pursuant to Section 43 of the Solicitors' Act 1974 with effect from 5th October 1995 and further Ordered that he should pay the costs of and incidental to the application and enquiry, fixed in the sum of £2,740.00.

The facts are set out in paragraphs 1 to 21 hereunder.

1. At the material times the respondent was a clerk employed by Messrs. Irving Harris & Co. of Blackpool, Lancashire. That employment terminated on 31st July 1993. The respondent was at the time of the hearing unemployed and would achieve pensionable age shortly thereafter. The respondent in his letter said that at the relevant time he had left his former employers and Mr Chappell was dealing with him purely on the basis of one friend to another between themselves as laymen.
2. In May 1994 Mr. & Mrs. Chappell wrote to the Solicitors Complaints Bureau (the Bureau) about the respondent. Messrs. Irving Harris & Co. had represented them for the previous seven years. The respondent usually had conduct of their matters and had become a friend.
3. In May 1993 the respondent had approached Mr. Chappell saying that, "he knew people who we could invest money with at a good rate and it would be secure." The respondent was to undertake the legal work.
4. On 26th June 1993 the respondent rang Mr. Chappell and asked him to go to his office. After an initial discussion about family matters and a small legal matter of which the respondent had conduct, the respondent said that one of his friends had died and her husband needed money straight away. The respondent said that he had guaranteed to give it to his friend, but as the respondent had lent his son £18,000.00 for his business and also some monies to his daughter he wondered whether Mr. Chappell could lend him £15,000.00 for a month. If so, he said he would draw up a contract.
5. Mr. Chappell was very clear in his memory that the respondent had said to him that Mr. Chappell should say nothing to anybody about the arrangement because as the respondent was a solicitor it would be illegal for him to borrow money and to act at the same time. Mr. Chappell said that his business affairs were always taken on jointly

with his wife and he required to time to discuss the matter with her. They both agreed that the respondent had been a good friend and had always undertaken their legal work well and he was to be trusted. Accordingly, when the respondent telephoned Mr. Chappell again, Mr. Chappell indicated that he would lend the respondent some money, but £10,000.00 rather than the £15,000.00 sought. The respondent then asked Mr. Chappell if he could get the cheque for him on the following day, which was a Saturday, and that he would call at Mr. Chappell's house to collect the same.

6. The respondent did call at Mr. Chappell's house to collect the cheque. The respondent said that he never visited Mr Chappell's house on any occasion to collect a cheque. He said that Mr Chappell delivered the cheque to him.
7. Mr. Chappell wanted to be sure that everything was witnessed and he asked Mr. Fawcett to be present in an adjoining room with the door ajar in order that he might overhear any conversation taking place between Mr. Chappell and the respondent. In his evidence, Mr. Fawcett confirmed what had happened.
8. Mr. Chappell was clear that the respondent did not at any time say that he should seek independent advice as to the loan. Nor did he say at any time that the loan was to be to any person other than the respondent. It was not suggested at any time that the money was being lent to a third party.
9. As no paperwork had been prepared for Mr Chappell, after some days he telephoned the respondent's office. The receptionist told Mr Chappell that the respondent had retired but he then came to the telephone and told Mr Chappell that he was carrying on part time, that Mr Chappell was not to worry and she gave Mr Chappell his home address.
10. Some weeks passed by and Mr Chappell heard nothing from the respondent. He had received a bill from Messrs Irving Harris & Co. for work that they had done which he thought was high and he telephoned the respondent. He said that he was going into the office and would sort the matter out; at the same time Mr Chappell asked the respondent about the money which he had lent to him. The respondent said that he would speak to the man to whom it had been lent. That was the first time Mr Chappell had indicated that his money had been lent to somebody else. From then on Mr Chappell telephoned the respondent every week and he kept saying that he would speak to the party who had the money but there were family difficulties.
11. On the 9th September 1993 the respondent visited Mr Chappell's house. Mr Chappell saw him together with his wife, and again Mr Fawcett was in the next room. The respondent told Mr & Mrs Chappell that they were not to worry as he had spoken to the man to whom he had lent Mr Chappell's £10,000 and they could have it back the following week. He had sorted out the bill with the solicitors. The respondent agreed that he had visited Mr Chappell's house late in 1993. He said that Mr Chappell was proud of renovations carried out on the house and the respondent had been shown around. It was his view that there was no one else in the property. The respondent said that even if anyone else had been in the house, its age, internal design, and

proximity to a busy traffic junction would have rendered it impossible for any person to overhear a conversation from an adjoining room.

12. From that time onwards once every week Mr Chappell telephoned the respondent who gave a different excuse as to why the money had not been repaid.
13. On the 22nd November Mr Chappell asked the respondent for a meeting because he still wanted confirmation in writing as to what had happened to his money. The respondent then said that he had an insurance policy which he would cash in and that the money would be repaid within a few days. Excuses continued throughout December.
14. After another unsatisfactory discussion on the 20th January, Mr Chappell went to see the partners at Irving Harris. They tried to get repayment for him but were unsuccessful. By that time Mr Chappell was threatening court proceedings, the respondent kept promising to pay and did not do so.
15. On the 2nd April 1994 Mr Chappell said that an envelope was pushed through his door. It was from the respondent and contained six post dated cheques the first to be encashed on the 30th April and five more representing each consecutive month totalling £10,000. Mr Chappell had consulted new solicitors and agreed to accept the cheques. The solicitors had raised the question of the interest but the respondent had not replied.
16. On the 30th April another letter was put through Mr Chappell's door by the respondent in which he said that he still had not got the money from the third party and he had told the bank to stop the cheque which Mr Chappell was about to pay in. As a result of that, Mr Chappell had taken proceedings against the respondent. Mr Chappell was represented by Mr Purvis.
17. Some of the post dated cheques were paid in but none had been met. It was clear that there was no point in paying in any of the other post dated cheques.
18. Proceedings were issued on behalf of Mr Chappell in May 1994 in Blackpool County Court claiming £10,000 principal plus interest. On the 17th October 1994 judgement was entered against the respondent for £10,800 debt plus interest and £338.50 costs.
19. In his defence the respondent suggested that he had given a form of promissory note in respect of the loan which Mr Chappell had made to a third party. Mr Chappell denied that he had ever lent money to a third party. Mr Chappell had instructed Mr Purvis' firm to take bankruptcy proceedings and Mr Purvis was able to confirm that a bankruptcy petition had been drawn up with the intended hearing date shortly after the disciplinary hearing.
20. In his evidence Mr Fawcett confirmed what Mr Chappell had said about the two meetings with the respondent at Mr Chappell's house in June and September 1993.

21. The respondent accepted that the money had been lent, but it was his position that money had been lent to a third party and not to the respondent himself. The respondent accepted that he had unwisely given a form of promissory note he had also given post dated cheques. The respondent said that he had no legal obligation to do such things and that those actions were taken because the respondent regarded himself as a friend of Mr Chappell to help him in a dilemma and for no other reason.

The submissions of the applicant

22. The Tribunal was invited to take the view that at all times Mr Chappell thought the respondent was a qualified solicitor. The respondent dealt with the matter from the office of his former solicitor employers and at no time advised Mr Chappell that the money was to be loaned to a third party, indeed Mr and Mrs Chappell agreed to lend the money on the basis that it was to the respondent personally (a person whom they trusted).
23. On a number of occasions the respondent led Mr Chappell to believe that the repayment would take place shortly and then made excuses when the payment did not take place. Post-dated cheques delivered to Mr Chappell had not been honoured.
24. It was established that a fiduciary duty was owed by a solicitor to his client and that duty would extend to dealings by employees of the solicitor. Similarly a solicitor must not at any time take advantage of a client nor act where his own interests conflict with the interest of a client or potential client. The Tribunal was referred in particular to paragraph 15:05 of the Law Societies Guide to The Professional Conduct of Solicitors the general principle being "a solicitor must not act when his or her own interests conflict with the interests of a client or potential client" and particular reference was made to the commentary, paragraph 5 "this principle applies not only when a solicitor is personally interested in the transaction, but equally when a partner or a member of the solicitor's staff is so interested." There was no doubt that a loan from a client to a solicitor or a member of his staff gave rise to a conflict of interest and the solicitor should in those cases ensure that the client takes independent legal advise. That requirement could not be circumvented and if a client should refuse to take independent legal advise, then the solicitor could not proceed with the transaction. In the light of those requirements the respondent acted in flagrant disregard of his duty to his clients.
25. The matter was considered by the Conduct Committee of the Solicitors Complaints Bureau on the 11th January 1995 when it was resolved to make application to the Tribunal for an order in respect of the respondent pursuant to Section 43.2 of the Solicitors Act 1974.
26. The matter had been set down for hearing by the Tribunal in June 1995. The Tribunal had been concerned about a letter received from the respondent which appeared to deny everything alleged against him and a fax of it in support of that allegation and the Tribunal thought it was right to give the respondent an opportunity to attend before them to put his case. The matter had been adjourned from June until October 1995.

The applicant had written a number of letters to the respondent, none of which had evoked response.

The submissions of the respondent (contained in his beforementioned letter of 4/10/95 sent by fax to the Tribunal)

27. The respondent submitted that he was not in contravention of any part of Section 43 or any Section of the relevant Act at all. He said "Respectfully in the circumstances of the case and the true facts which I have related no Section 43 Order is warranted nor should be made."

28. The respondent went on to say "Frankly the possible heavy expense does not permit me in person or by representative to defend this matter nor deal with it as I would have liked. Nevertheless in fairness I see or know of no reason whatsoever why I should admit any incorrect facts or fabrications to avoid those risks of heavy cost and expenses. I trust and feel sure you will understand my position and feelings and sincerely trust you accept what I have stated and maintain. I therefore again humbly submit that it would be inappropriate harsh and unconscionable to make any Order against me herein."

"I apologise for any seeming discourtesy for the lack of response and otherwise to you and to Mr Lynch. The whole matter has been allowed to grow out of all proportion and become very distressing to me after a lifetime within the profession in the twilight of my working life."

"With respect I do not accept that the allegations made justify the Disciplinary charges or at all made against me."

"I have never taken advantage of Mr Chappell. He is despite his demeanour a very experienced business man and very capable in making loans not only by himself by through others."

"There was no fiduciary relationship whatsoever existing with Mr Chappell....."

"The purpose of the loan was never misrepresented. Mr Chappell was clearly aware before the outset of the terms conditions etc. etc. Whilst there was no obligation upon me I advised Mr Chappell to seek independent advice before proceeding. I was not in contravention of any obligation statutory or otherwise and again submit with respect that no Section 43 Order is warranted."


29. The respondent went on to say that "it may be that an application will be made to the Court to set aside the judgement in all the circumstances of the case, although I am strongly pursuing sources from elsewhere to enable full repayment to be made as soon as possible to Mr Chappell notwithstanding and I will try and recover from the 3rd party in due course."

"I trust you will accept my humble submissions in the matter that the allegations made are ill founded, dismiss the application and make no order under Section 43 or at all and no order as to costs or otherwise against me."

The Tribunal have heard the clear oral evidence of Mr Chappell, Mr Fawcett and Mr Purvis. They have had, of course, to set against that the written representations of the respondent even though made as they were "at the eleventh hour". The respondent had been given every opportunity, including indeed an extra opportunity, to make his position clear to the Tribunal. He had not done so and might well have considered the very late submission of the letter to the Tribunal as an expedient way to jeopardise yet another hearing. The Tribunal have considered most carefully everything stated by the respondent in his letter. They accept the sworn evidence of Mr Chappell, Mr Fawcett and Mr Purvis and in so far as anything stated by them is in conflict with the written submissions of the respondent the Tribunal is satisfied beyond all reasonable doubt that their evidence is true and correct. The Tribunal was mindful of its clear duty to protect the good reputation of the solicitors' profession and the interests of the public. The Tribunal would not adjourn the hearing of the matter again. Mr Chappell was a clear and plausible witness who gave an unequivocal evidence as to what had happened. The Tribunal had no reason to doubt his evidence and therefore had found that the respondent was employed by a firm of solicitors at the time he negotiated a loan personal to him from a client of his employers firm. Whether or not that money have been repaid, the initial negotiation and acceptance of the loan in those circumstances was absolutely wrong and constituted conduct on the part of a solicitor's clerk which was entirely unacceptable and left the Tribunal in no doubt that the possible future employment of the respondent within the solicitors' profession should be controlled. The Tribunal made the Order sought and further ordered that the respondent should pay the costs of and incidental to the application and enquiry. It was noted that those costs were somewhat higher than usual in cases of this type, but the respondent's actions had served substantially to increase the costs.

DATED this 6th day of November 1995

on behalf of the Tribunal


G. B. Marsh
Chairman

Findings filed with the
Law Society on the
day of 19

