

IN THE MATTER OF PETER CHARLES CLARIDGE, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mrs. E. Stanley
Mr. K.J. Griffin

Date Of Hearing: 11th July 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 Carlton Maurice Edwards on 11th April 1995 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 Peter Charles Claridge of _____, Horfield, Bristol, _____ 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 had been tried and upon his own confession convicted before Bristol Crown Court of nine offences of false accounting and sentenced to a total of two years and six months imprisonment.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 11th July 1995 when Harvey Silverman, solicitor and partner in the firm of Messrs. Marsh Ferriman

& Cheale of Southfield House, 11 Liverpool Gardens, Worthing, West Sussex BN11 1SD appeared for the applicant and the respondent did not appear and was not represented.

The respondent had, however, filed with the Tribunal an affidavit dated 22nd June 1995 which is referred to hereunder as "the respondent's affidavit".

The respondent's affidavit referred to a letter addressed to the Clerk to the Tribunal dated 21st June 1995 by Messrs. Rodney King, solicitors of All Saints House, 6 All Saints Lane, Bristol BS1 1JH confirming that firm had been consulted by the respondent.

In their submission there appeared to be some considerable ambiguity when reading Section 43 of the Solicitors Act 1974 and paragraph 1(b) of the Solicitors' Disciplinary Proceedings Rules 1994.

The definition of "solicitor's clerk" at paragraph 1(b)(i) of the Regulations stated clearly that that was to be "a person who is or was employed or remunerated by a solicitor or by a firm of solicitors as a clerk and is or was not himself a solicitor at the relevant time".

At the relevant time the respondent was an employee at Bristol City Council although he was working in the City Clerk's Department. On that basis he was not strictly "employed or remunerated by a solicitor". In the submission of Messrs. Rodney King the regulations did not apply to the respondent and the Tribunal had no power to make the proposed order.

Section 43(1) of the Solicitors Act 1974 referred instead to "a person who is or was a clerk to a solicitor but is not himself a solicitor". It was acknowledged that that did not qualify the description by confining the connection to "employment" or "remuneration" but was not by itself in any way contradictory of the definition contained in the regulations. If it were to be accepted that the Act was drawn in broad terms and the regulations pointed to specifics, it appeared to Messrs. Rodney King that the respondent had to fall outside the intended definition.

Messrs. Rodney King referred also to paragraph 31.20 at page 768 of the Guide to Professional Conduct of Solicitors 1993, 6th Edition. That paragraph dealt with the situation where an order had been made under Section 43 and a solicitor employed in Local Government or commerce and industry sought to employ a clerk subject to such order. It was clearly stated at that paragraph that the consent of the Law Society in such circumstances was not required as a clerk could not be said to be employed by a solicitor in connection with his or her practice in accordance with Section 43(2) of the Solicitors Act. In their submission it was logical that if the Order made was not intended to restrict such employment then it would be wholly inappropriate for the restriction to be put in place in the first instance in respect of an employee in similar employment at the relevant time.

The applicant invited the Tribunal to take the view that it did have appropriate jurisdiction to deal with the respondent.

The Tribunal was referred to its decision relating to Stephen Lawrence Curry, a solicitor's clerk, number 6626/1994 which case was heard before the Tribunal on 16th March 1995 and the Tribunal's Findings were dated 26th April 1995. In that case the Tribunal accepted the submissions of the applicant that it was necessary for him to prove only three matters, namely:

(a) that the respondent was or had been a clerk to a solicitor; (b) the conviction for an offence of dishonesty and (c) that it was the opinion of the Law Society that it would be undesirable for the respondent to be employed by a solicitor in connection with his practice.

In connection with (a) reference was made to the judgment of the Lord Chief Justice In The Matter of a Solicitor's Clerk number CO1848/87 (a copy of such judgment being before the Tribunal on this occasion) when he said "in my judgment if it is shown that a person has acted as a clerk and has performed functions which are the functions, truly speaking, of a clerk to a solicitor or the functions of a solicitor himself, the mere fact that he is not a servant of the solicitor does not prevent him from coming within the words of the section". It followed that the word "employed" did not mean that there had to exist a relationship of master and servant between the solicitor and the clerk.

In an earlier decision of the Tribunal (number 6271/1992 Finding and Order number 5158) the Tribunal disregarded the relationship which existed for employment law purposes and took the view that the respondent had done the work of a solicitor's clerk. The mischief that Section 43 of the Solicitors' Act was designed to prevent was the employment of an unsuitable person by a solicitor in a position of trust in order to protect the interests of the public.

As to the definition of a solicitor's clerk contained in the Solicitors (Disciplinary Proceedings) Rules the word "remunerated" included indirect remuneration. The words "the relevant time" in Rule 1(B)(i) was the time when the respondent was employed or remunerated by a solicitor or firm of solicitors. The meaning of "solicitors clerk" within the Rules could not be other than that provided by the substantive legislation.

The provisions of Section 43 of the Solicitors Act 1974 were not penal but were designed to protect the public.

In the case of Stephen Lawrence Curry (6626/1994) the Tribunal held that it did have jurisdiction to deal with the matter. The arrangement existed in that particular case where a company engaged and remunerated a person who worked in a solicitor's office as a clerk was held not to be a device which could circumvent the jurisdiction of the Tribunal and the provisions of the Solicitors Act. The individual concerned undertook the work of a clerk, or indeed the work which normally might have been undertaken by a solicitor, and was remunerated for such work, albeit indirectly. The Tribunal was unable to find any merit at all in the argument that the respondent was not a solicitor's clerk and the Tribunal had the relevant jurisdiction and heard the case.

In this matter the Tribunal have taken the view that the respondent was employed in the sense that he was engaged to undertake the work of a solicitor's clerk, indeed he undertook work that might commonly be undertaken by a solicitor. It was well established that a master and servant relationship between the solicitor and the clerk was not fundamental to the definition of "a solicitor's clerk".

The Tribunal have taken note of the submission of Messrs. Rodney King when they referred to paragraph 31.20 of the Guide to the Professional Conduct of Solicitors confirming that a solicitor employed in local government need not seek the permission of the Law Society before employing a clerk subject to an order made under Section 43 of the Solicitors Act. However, the mischief which the Solicitors Act was designed to prevent was the employment

of a clerk subject to such an order in a position of trust and having conduct of clients' matters so that the protection of the public became an issue. The protection of the public was not an issue if such clerk was employed by a Local Authority or a commercial organisation where he did not undertake legal work on behalf of members of the public.

The Tribunal confirmed that it had jurisdiction to deal with this matter and the matter proceeded to a full hearing.

The evidence before the Tribunal included the admissions of the respondent as to the facts.

At the conclusion of the hearing the Tribunal ORDERED that as from 11th July 1995 no solicitor should except in accordance with permission in writing granted by the Law Society for such a 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 Peter Charles Claridge of _____, Horfield, Bristol a person who was or had been a clerk to a solicitor and the Tribunal further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £590.00.

The facts are set out in paragraphs 1 and 2 hereunder.

1. The respondent, who was not a solicitor, was employed as a clerk to Dudley Lewis City Clerk of Bristol City Council from the 5th August 1974 until 23rd February 1994 and latterly in the capacity of principal assistant claims and litigation officer.
2. On 21st November 1994 the respondent was tried and upon his own confession convicted before Bristol Crown Court of nine offences of false accounting and sentenced to a total of two years and six months imprisonment. The offences were committed whilst the respondent was employed by Bristol City Council and involved the making of false claims in respect of fictitious events and injuries and making payments to himself in respect of those matters.

The submissions of the applicant

3. The respondent had been convicted of serious offences involving dishonesty and was currently serving a custodial sentence. It was right that his employment within the solicitors' profession should be regulated.

The submissions of the respondent (contained in the respondent's affidavit)

4. The respondent was 49 years of age and married to his second wife in respect of whom divorce proceedings were pending. He had one adult son and two children for whom he was responsible. The respondent expressed concern that he had been unable to provide for his family as civil proceedings had been brought against him as a result of his actions.
5. The respondent left school at the age of 16 and was employed as an office boy with a firm of solicitors. He qualified as a legal executive at the age of 18 and continued in employment with the same firm of solicitors until about 1973. He went into the Navy for about 12 months and decided to leave after suffering a back injury.

6. In August 1974 he began employment with the City Clerk's Department of the Bristol City Council. He began as a claims assistant, became the deputy to the principal in the later 1980s and in 1990 became the acting principal. He became the principal in 1992.
7. The offences before the Tribunal dated back to 1984 and began at a time when the respondent was suffering financial pressure following his first divorce. After that the situation got out of control and the taking of money became almost an "addiction". The respondent almost felt a sense of relief when matters came to light.
8. The respondent felt enormous regret and felt that he had let everyone down, particularly work colleagues and his family. As soon as the police became involved he cooperated fully.
9. The respondent had suffered a leg injury whilst in prison in December 1994 which had led to a degree of disability. He asked that he might be given the opportunity to work again in the legal field and to be able to start afresh on leaving prison.
10. The respondent apologised unreservedly for his conduct and felt particular remorse for the fact that the monies he took were from public funds and that the public had suffered as a result of his actions.

The Tribunal FOUND the allegation to have been substantiated. There was no doubt that it was right that the Order sought be made so that the solicitors' profession and the public might be protected.

DATED this 9th day of October 1995
on behalf of the Tribunal

D.J. Leverton
Chairman



Findings filed with the
Law Society on the 10th
day of October 1995

