

IN THE MATTER OF DAVID HENRY WINSTON - SOLICITOR

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mr. J.N. Barnecutt
Mr. M.C. Baughan

Date Of Hearing: 26th September 1995

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 David Rowland Swift of 19 Hamilton Square, Birkenhead, Merseyside on the 18th April that David Henry Winston solicitor of London, NW2 (formerly of 72/74 Notting Hill Gate, London, W11 3HT) might be required to answer the allegations set out in the statement which accompanied the application and such Order might be made that the Tribunal should think right.

On the 12th July 1995 the applicant submitted a supplementary statement. On the 15th August 1995 the applicant submitted a second supplementary statement. The allegations set out below include those contained in both the original and the first and second supplementary statements.

The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely;

- (i) that he had practised and/or held himself out as entitled to practice as a solicitor in breach of a Condition imposed on his Practising Certificate during the practice year commencing the 1st November 1992;
- (ii) that he had practised and/or held himself out as entitled to practice as a solicitor without being the holder of a current Practising Certificate during the practice year commencing the 1st November 1993;
- (iii) that he was guilty of delay in the conduct of professional business;
- (iv) that he was deliberately and/or recklessly party to the production of a document that he claimed to be an Order of the Court which purported Order was not genuine and had not been made by the Court;
- (v) that he deliberately and/or recklessly misled his client;
- (vi) that he failed to reply to letters from other solicitors and/or from the Solicitors Complaints Bureau;
- (vii) that he had, without reasonable excuse, failed to hand over client's papers when requested so to do;
- (viii) that he had failed to reply to letters from other solicitors and the Solicitors Complaints Bureau;
- (ix) that he had practised as a solicitor without there being in force a Practising Certificate after the 6th May 1994;
- (x) that contrary to Rule 8 of the Solicitors Accounts Rules 1991 he drew money out of Client Account other than as permitted by Rule 7 of the said Rules;
- (xi) that he has utilised client's funds for the purposes of other clients.

The application was heard at the Courtroom No.60 Carey Street, London, WC2 on the 26th September 1995 when David Rowland Swift, solicitor and partner in the firm of Percy Hughes & Roberts of 19 Hamilton Square, Birkenhead, Merseyside appeared for the applicant and the respondent did not appear and he was not represented.

The evidence before the Tribunal included a bundle of documents "DHW1" being evidence as to service. "DHW2" was a copy of a Court Order issued on the 16th November 1991 from the Principal Registry of the Family Division, and "DHW3" was a copy of the same Court Order but falsified as to date and content. The respondent had written to the applicant indicating that the facts in all statements were not in dispute save for those facts relating to the complaint of Mrs R. The respondent had not served a counter-notice in respect of any of the evidence served upon him.

At the conclusion of the hearing the Tribunal ORDERED that the respondent David Henry Winston of , London, NW2 (formerly of 72/74 Notting Hill Gate, London,

W11 3HT), be Struck Off the Roll of Solicitors and they further Ordered that he do pay the costs of and incidental to this application and enquiry to be taxed if not agreed.

The facts are set out in paragraphs 1 to 11 hereunder;

1. The respondent was admitted as a solicitor in 1978 and at all material times carried on practice in partnership under the style of Winston & Co. at 72/74 Notting Hill Gate, London, W11 3HT.
2. On the 26th October 1993 the respondent's application for a Practising Certificate for the practice year commencing 1st November 1992 was granted subject to the condition that the respondent produce evidence that he had received adequate tuition from a person skilled in identifying the dishonest client, such tuition to be a minimum of two hours and to inform the Solicitors Complaints Bureau that this had been undertaken. The respondent continued to practice and/or hold himself out as entitled to practice as a solicitor during the currency of this Practising Certificate, which was terminated on the 6th May 1994 but did not comply with the said condition.
3. On the 26th January 1994, it was resolved that the respondent's Practising Certificate for the practice year commencing 1st November 1992, which was then still in force, should be subject to the further condition that the respondent should practise only in approved partnership or employment, such condition to come into effect on the 26th July 1994.
4. On the 6th May 1994 the respondent's Practising Certificate was terminated; the respondent having made no application for its renewal. The respondent continued to practise and/or hold himself out as entitled to practise as a solicitor without being the holder of a current Practising Certificate.
5. On the 29th April 1993 Messrs Ronald Fletcher & Co. solicitors for Mrs R. complained to the Solicitors Complaints Bureau that the respondent had acted on behalf of Mrs R. but had been guilty of delay. Mrs R. was the Guardian of JB. (A Minor) who had sustained injury in an accident, in which her mother sustained fatal injuries, on the 13th August 1989. Mrs R. had instructed the respondent's firm to pursue a claim for compensation and alleged that the respondent's firm had failed to conduct the matter expeditiously.
6. On the 7th May 1993 Messrs Ronald Fletcher & Co. further complained to the Solicitors Complaints Bureau that the respondent had been party to the production of a document that purported to be an Order of the Court granting leave for the said JB, who was a Ward of Court, to be taken out of the jurisdiction which purported Order was not genuine and had not been made by the Court. The respondent had been instructed by Mrs R. to obtain leave of the Court for JB to be taken out of the jurisdiction. She believed that the respondent was not taking steps with appropriate expedition and complained to the respondent who promised action on a number of occasions. The said Order, which was not a genuine Order of the Court but had been produced by alteration of another Order in another case, was produced to Mrs R. by the respondent. The child was subsequently removed from the jurisdiction of the Court to Jamaica.

7. On the 15th March 1994 the Solicitors Complaints Bureau wrote to the respondent seeking explanations in respect of the matters set out above. The respondent did not reply nor did he provide any explanation. Further letters were sent to the respondent on 10th May, 29th June and 12th August 1994 but the respondent did not reply.
8. On the 27th July 1994 Messrs Maurice Hackenbroch & Co. solicitors complained to the Solicitors Complaints Bureau that the respondent had previously acted for their clients, Messrs C. and Mr.K. in connection with the estate of the late Mr.A. but would not deal with correspondence or enquiry. The clients had changed solicitors and instructed Messrs Maurice Hackenbroch & Co. to act on their behalf and obtain the papers. Despite requests the respondent had not handed over the papers to Maurice Hackenbroch & Co. The papers were subsequently recovered by limited Intervention pursuant to Paragraph 3 of the 1st Schedule of the Solicitors Act 1974.
9. On the 20th January 1995 the Solicitors Complaints Bureau wrote to the respondent seeking explanation. The respondent did not reply nor did he provide any explanation. Further letters were sent to the respondent on the 1st March, 23rd March and 18th April but the respondent did not reply.
10. The respondent had practised as a solicitor without there being in force a Practising Certificate after the 6th May 1994.
11. Upon due notice to the respondent the Investigating Accountant of the Law Society carried out an inspection of the respondent's books of account. A copy of the Investigating Accountant's report of the 9th February 1995 showed that there was a shortfall in client's funds of £1267.17 at 31st October 1994 and a shortfall of £4903.88 on 20th September. The said shortfalls arose as a result of debit balances caused by overpayments.

The submissions of the Applicant

12. It was asserted that only the complaint of Mrs R. concerning the matter of JB was contested. The applicant had produced a skeleton argument and had served the same upon the respondent who had made no reply whatsoever. The kernel of the complaint appeared in Mrs R's affidavit sworn on the 24th January 1994. Therein she stated that she instructed the respondent to take steps to obtain leave to take the child out of the jurisdiction. She complained that there was no apparent progress. She stated that for some twelve to eighteen months there was no correspondence sent to her and that telephone calls did not meet with success. Mrs R. stated that she requested the respondent to post the Order to her on many occasions but it was not received. She stated that she then visited the respondents offices on the 15th January 1993 and waited there until the respondent handed to her what he said was the necessary Order of the High Court. A copy of the said document was exhibited at "DHW3", and was dated 15th January 1993, the day of Mrs R's attendance at the respondent's office and was placed in Mrs R's hand by the respondent. She did not deal with anyone else on the 15th January 1993. In her affidavit she contested the authenticity of the purported Order. The court subsequently confirmed that its records showed that no Orders of

the 15th January had been made and that the writing on the 'Order' was not that of District Judge Moorhouse.

13. The skeleton argument went on to recite the evidence of Mr. Rosenblatt, Mrs R's new solicitor who made complaint to the Solicitors Complaints Bureau regarding the authenticity of the purported Court Order handed to him by Mrs R. This evidence established continuity with regard to the purported Order handed by the respondent to Mrs R. and established that the Order "DHW3" was not a genuine Order but appeared to be fabricated using a genuine Order of the 16th November 1991 (DHW2).
14. Mrs R. acted on the purported Order and the child emigrated in March 1993. It had been necessary to take action through the High Court to regularise the position. The respondent had not provided any comment or explanation in connection with the purported Court Order when such was sought from him by the Solicitors Complaints Bureau. It was submitted that there was in reality no such Order and the purported Order was a crude fabrication. That fact was obvious from a consideration of the document itself and the fact that there was no such court hearing on the 15th November 1993. The inevitable conclusion to be drawn was that the respondent was deliberately and/or recklessly party to the production to Mrs R. of the purported Order which he claimed to her to be an Order of the Court, which purported Order was not genuine and had not been made by the court. Mrs R. was misled by the respondent into believing that the purported Order was genuine.
15. The respondent had admitted delay in dealing with the affairs of Mrs R. She had not been able to get any substantive response from him for eighteen months. The respondent was instructed to pursue a compensation claim on behalf of the injured plaintiff. A perusal of the correspondence showed that the insurance company were very anxious to settle and the matters at issue were purely matters of quantum. No progress was made on the claim to compensation prior to Mrs R. changing solicitors.
16. With regard to the breaches of the Accounts Rules, the respondent continued in practice after the beginning of November 1994 until 1995. Indeed he was shown as a partner by the Reporting Accountant up to the period ending 31st December 1994. In November 1994 he admitted to the Investigating Accountant that he was a partner in a practice. The shortfalls occurred as a result of overpayments. It was not alleged that the respondent was dishonest in relation to his books of account but the situation as revealed by the Investigating Accountant was indicative of muddle and inefficiency.

The Submissions of the Respondent

17. None were received by the Applicant nor by the Clerk to the Tribunal.

The Tribunal FOUND all the allegations to have been proved. On the 17th July 1994 the Tribunal Found the following allegations to have been substantiated against the respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars;

- (i) failed to forward Title Deeds when requested to do so;

- (ii) failed to reply to letters from the Solicitors Complaints Bureau;
- (iii) been guilty of delay in the conduct of professional business;
- (iv) failed to comply with a Direction made by the Assistant Director of the Solicitors Complaints Bureau, acting pursuant to delegated powers.

On that occasion the Tribunal ORDERED that the respondent pay a fine of £2,500.00 and to pay a fixed sum in costs.

The respondent did not appear to have learnt his lesson after his last appearance before the Tribunal. He has not communicated effectively, if at all, with the SCB, nor the applicant, nor the Tribunal itself. This fact alone would give the Tribunal very grave doubts as to the wisdom of allowing the respondent to continue in practice. However, the matter of Mrs R's complaints put it beyond any doubt that the respondent was not fit to be a solicitor. He was an Officer of the Court and yet he fabricated Court documents and in so doing gravely misled his client by allowing her to think that she could take a Ward of Court out of the jurisdiction. This matter was of the utmost seriousness and the Tribunal had no hesitation in Ordering the ultimate sanction against the respondent.

DATED this 6th day of November 1995

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

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