

IN THE MATTER OF JOHN FRANCIS McCARTHY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. G.B. Marsh (in the Chair)  
Mr. J.N. Barnecutt  
Lady Bonham-Carter

Date Of Hearing: 9th January 1996

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## FINDINGS

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

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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 July 1995 that John Francis McCarthy of Lymm, Cheshire, WA13 solicitor 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 on the 25th July 1995 the applicant made application to the Tribunal that a Direction be made by the Tribunal that the Direction of the Law Society relating to inadequate professional services dated the 27th June 1994 made in respect of the respondent John Francis McCarthy of 25 Pepper Street, Lymm, Cheshire, WA13 OJG be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

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

- (a) unreasonably delayed in the conduct of professional business;
- (b) failed to reply promptly or at all to correspondence from and on behalf of clients;
- (c) failed to reply to correspondence from the Solicitors Complaints Bureau.

Further in the submission of the applicant the course of conduct which was the subject of the allegations was conduct compromising the good repute of the solicitors' profession contrary to Rule 1(d) Solicitors' Practice Rules 1990.

The evidence before the Tribunal included the admissions of the respondent contained in a letter addressed to the applicant dated the 5th January 1996, a copy of which was sent to the Tribunal by fax on the 8th January 1996.

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Francis McCarthy of Lymm, Cheshire, WA13 solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 9th day of January 1996 and they further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £2,833.25 inclusive. The Tribunal also DIRECTED that the Direction of the Law Society relating to inadequate professional services dated the 27th June 1994 made in respect of the respondent John Francis McCarthy of 25 Pepper Street, Lymm, Cheshire, WA13 0JG be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

The facts are set out in paragraphs 1 to 14 hereunder.

1. The respondent was admitted a solicitor in 1984 and at the material times practised as a solicitor on his own account under the style of McCarthy & Co. at 19 Padgate Lane, Warrington, Cheshire. He ceased to practise on the 5th October 1993.
2. The respondent acted for Halifax Building Society in connection with mortgage advances in four matters, three of the advances being issued on the 2nd November 1990, the 15th July 1991 and the 16th July 1991. The date of the fourth advance was not before the Tribunal but was believed to be on a date in 1991.
3. Halifax Building Society wrote to the respondent on the 2nd November 1993 seeking deeds to all four of the properties. The respondent did not reply. The Society then instructed Messrs. Dibb Lupton Broomhead solicitors of Leeds to act on its behalf in seeking to recover the deeds. That firm wrote to the respondent on the 13th December 1993 but the respondent did not reply. Messrs. Dibb Lupton then wrote a letter to the Solicitors Complaints Bureau (the Bureau) dated the 24th September 1993.

4. The respondent had failed to register the interests of the borrowers and the Society, in each of the four cases referred to, at the Land Registry. Dibb Lupton Broomhead took civil proceedings against the respondent seeking delivery of the required deeds. The Order was made on the 28th January 1994 when the Society's solicitors were able to complete registration in each of the four cases.
5. The respondent acted for Alliance & Leicester Building Society in connection with a mortgage advance which was issued on the 21st January 1991. The Society wrote to the respondent seeking the deeds of the property on the 22nd February 1993, the 6th May 1993 and the 22nd November 1993. On the 10th January 1994 by letter Alliance & Leicester Building Society complained to the Bureau. The respondent had failed to register the interests of the borrowers and the Building Society. The respondent delivered up his file to a representative of the Bureau by July 1994.
6. The respondent was instructed by Nationwide Building Society in connection with a mortgage advance which was issued on the 30th April 1990. Nationwide wrote to the respondent seeking the deeds, writing nine letters the first of the series of letters being dated the 24th January 1992 and the last being dated the 8th December 1993. On the 21st June 1993 Nationwide complained to the Bureau.
7. The respondent forwarded the deeds in question to the Nationwide on the 21st February 1994. The respondent had failed to register the interests of the borrower and the Building Society.
8. The respondent acted also for Nationwide in connection with another mortgage advance. The Building Society wrote to the respondent seeking the return of deeds which he had held since on or about the 23rd April 1991. The respondent ignored three reminders prior to the 10th August 1992 and also failed to reply to letters from the Nationwide seeking the deeds there being six letters written to him, the first being on the 10th August 1992 and the last on the 21st January 1994.
9. The respondent and Mrs A were the executors of the estate of GA who died on the 25th August 1991. Probate was granted on the 24th December 1991. In due course Mrs A instructed Messrs. Rileys, solicitors of Warrington to act on her behalf as she was concerned about the respondent's lack of communication in relation to the estate. Acting on behalf of Mrs A, Messrs. Rileys wrote to the respondent seeking information. They wrote nine letters, the first in the series being dated the 27th November 1992 and the last the 24th May 1993.
10. Messrs. Rileys complained to the Bureau by letter dated the 19th July 1993. The matter was considered by the Bureau on the basis of an inadequate professional services investigation and as a result an Assistant Director of the Bureau ordered the respondent (inter alia) to pay £400.00 by way of compensation to the estate of GA. A decision was reached on the 27th June 1994 and communicated to the respondent by letter dated the 29th June 1994. The compensation was payable within 35 days but not before 28 days notification of the decision. The respondent did not appeal against the decision, nor had he complied with it.

11. The respondent acted for Cheltenham & Gloucester Building Society upon mortgage advances in three matters. The respondent failed to reply to correspondence addressed to him by Cheltenham & Gloucester in relation to those matters and the Society complained to the Bureau on the 22nd April 1992, by which date all of the mortgage advances had been issued.
12. The Bureau wrote to the respondent seeking his observations. Ten letters were written to the respondent, the first having been dated the 1st May 1992 and the last the 11th May 1993. The respondent replied to none of them.
13. The files were obtained after the Bureau exercised its statutory power to appoint an agent to collect them. The respondent had not registered the interests of the borrowers nor of the Cheltenham & Gloucester Building Society.
14. As a result of the matters referred to above, representatives of the Bureau held a meeting with the respondent on the 22nd September 1993. Subsequent to the meeting the Bureau wrote to the respondent seeking a full explanation in relation to all of the matters. The letter was dated the 22nd September 1993. The respondent did not reply.

#### **The Submissions of the Applicant**

15. The Solicitors Complaints Bureau had received many complaints concerning delays in undertaking work and failures to communicate on the part of the respondent. To maintain the Solicitors Complaints Bureau was very expensive for the solicitors' profession and failures on the large scale of the respondent and in particular his failures to respond to letters addressed to him by the Bureau had cost the solicitors' profession a great deal of money. It was inevitable that the respondent's behaviour would damage the reputation of solicitors in the eyes of the public.
16. In his letter of the 5th January, the respondent said he certainly had not abandoned his practice but in the submission of the applicant he certainly had abandoned his responsibility towards his clients, in particular institutional lending clients. He had made matters worse by not co-operating with his own professional body.
17. In short the respondent seemed to have "given up the ghost"; he indicated that there were mitigating circumstances, but he was not prepared to make them public.
18. The applicant could not properly suggest that the respondent had been dishonest, but he had caused great inconvenience and anxiety. One claim had been paid out of the Law Society's Compensation Fund in the sum of £1,175.00 which had been paid to Messrs. Rileys on behalf of Mrs A. There was one pending claim in the sum of £1,160.00.
19. In the respondent's letter he expressed the wish that he no longer be on the Roll of Solicitors, but in the submission of the applicant that did not alter the power of the

Tribunal to make such Order as it thought right or influence the way in which they exercised that power.

**The Submissions of the Respondent (contained in his before-mentioned letter of the 5th January 1996)**

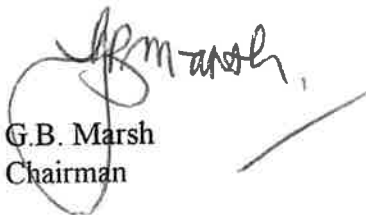
20. The respondent would not attend the hearing and meant no discourtesy by his non-attendance.
21. The respondent became unable to cope with the pressures of practising law owing to extreme personal difficulties and he disposed of his practice to another firm at Altrincham. At the time it was the respondent's intention to cease practising permanently.
22. The respondent had not abandoned his practice or his clients. He had spent much time passing over active files to the Altrincham firm, giving a typed history of each case and the position it had reached and other information which was of assistance. Deeds had been passed back to clients where appropriate and others were passed to the Altrincham firm together with clients' wills.
23. The respondent accepted that in a small number of cases he had not registered Charges at the Land Registry. He accepted that his delay was inexcusable but occurred owing to his situation and his state of health. The respondent declined to detail the personal problems he faced at the time of the closure of his practice.
24. In the matter of the estate of Mrs GA the respondent believed he had acted quickly and within 14 weeks of instructions had completed the sale or exchange of the deceased's home and had effected a partial distribution to beneficiaries representing over three quarters of the total estate. The respondent had immediately offered to pay such interest as the successor solicitor considered correct.
25. In connection with the failures to register documents at the Land Registry, after delivery of the deeds and Land Registry forms the respondent had paid the Land Registry fees and all costs associated with those matters. Messrs. Dibb Lupton Broomhead had continued with proceedings against the respondent despite the fact that the firm at Altrincham were holding the relevant deeds. The respondent had been presented with a large bill of costs in connection with that matter.
26. The respondent said he merely wished to have his name removed from the Roll of Solicitors and pay reasonable and proper sums to reimburse expenses incurred in dealing with any files that he had been unable to complete.
27. The respondent was running his own small commercial business and gave some detail of his financial circumstances.

The Tribunal FOUND the allegations to have been substantiated. They believed that the applicant was right when he said that the respondent appeared "to have given up

the ghost". The respondent's failures were considerable and there can be no doubt that delays and failures to deal with correspondence arising from whatever source causes frustration, anxiety, inconvenience and cost to the writers of such letters who are unable to persuade the respondent to reply. There was no doubt that such behaviour sullied the good reputation of the solicitor's profession. Clearly, the respondent was not fit to be in practice on his own account. In view of the catalogue of failures on the part of the respondent, the Tribunal gave consideration to the imposition of the ultimate sanction, but noted that there appeared to have been no dishonesty on the part of the respondent. The Tribunal took into account that the respondent had been beset with health and personal problems, although he had declined to make full details available to the Tribunal. The Tribunal took the view that the public should be protected from a solicitor who failed properly to deal with the matters before him and in the circumstances considered it appropriate to impose an indefinite period of suspension upon the respondent. The Tribunal further Ordered that he pay the costs of and incidental to the application and enquiry in the fixed sum of £2,833.25. The Tribunal made the Direction sought. If it transpires that the respondent had belatedly complied with the Bureau's ruling, then the Tribunal's Direction would not be enforced.

DATED this 13th day of February 1996

on behalf of the Tribunal

  
G.B. Marsh  
Chairman

*Findings filed with the  
Law Society on the 16<sup>th</sup>  
day of February 1996*