

IN THE MATTER OF PHYLLIS FRENCH, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. G.B. Marsh (in the Chair)
Mr. R.B. Bamford
Mr. M.C. Baughan

Date Of Hearing: 9th July 1996

FINDINGS

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

An application was duly made on behalf of the Law Society by Peter Harland Cadman solicitor of 2 Putney Hill, Putney, London, SW15 6AB on the 3rd March 1996 that the Tribunal Order that as from a date to be specified in the Order 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 of a solicitor Phyllis French of Copdock, Ipswich, Suffolk, IP8 a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974 or that such other Order might be made as the Tribunal should think right.

The allegations were that the respondent had been guilty of conduct of such a nature that in the opinion of the Law Society it would be undesirable for her to be employed by a solicitor in connection with his practice as a solicitor namely that she had:

- (a) contrary to Rule 8(5) of the Solicitors' Investment Business Rules 1990 failed to establish or maintain Central Register of matters required to be recorded by the said Rules;

- (b) contrary to Rules 9(1) and 9(2) of the Solicitors' Investment Rules 1990 failed to take reasonable steps to ascertain the facts about the clients' personal and financial position or the suitability of investments or transactions for the clients as may reasonably have been expected to be relevant to the proper performance of authorised investment services;
- (c) contrary to Rule 10 of the Solicitors Practice Rules 1990 failed to account to her clients for any commission of more than £10.00 received and/or failed to disclose to her clients the amount of any commission received or the basis of calculation of commission retaining the same without consent;
- (d) contrary to paragraph (a) of the 7th Schedule of the Solicitors' Investment Business Rules 1990 failed to make reasonable enquiries to provide the best advice to her clients.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 9th July 1996 when Peter Harland Cadman solicitor and partner of Messrs. Russell-Cooke Potter and Chapman of 2 Putney Hill, Putney, London, SW15 6AB appeared for the applicant and the respondent did not appear and was not represented. The respondent had addressed a letter to the Tribunal dated the 13th May 1996 in which she confirmed that she would not attend or be represented on the 9th July 1996. That letter is referred to hereunder as "the respondent's letter".

The evidence before the Tribunal included the admissions contained in the respondent's letter.

At the conclusion of the hearing the Tribunal ORDERED that as from the 9th July 1996 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 of a solicitor Phyllis French of Copdock, Ipswich, Suffolk, IP8 a person who was or had been a clerk to a solicitor and the Tribunal further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £514.05 inclusive.

The facts are set out in paragraphs 1 to 12 hereunder.

1. The respondent, who was not a solicitor, was employed as a financial services consultant by Messrs. Sparling Benham and Brough solicitors of Colchester. She had been employed in the same capacity by that firm and its predecessors from approximately the 4th January 1993 until the 31st July 1995. The subject matter of the allegations had come to light following a visit to the respondent's employers by the Law Society's Monitoring Unit. The report of the Monitoring Unit dated the 28th February 1995 was before the Tribunal.
2. In the report it was noted that the respondent had been employed by another firm of solicitors at Epping which firm had been visited twice by the Monitoring Unit. The visit to Messrs. Benham and Brough had however been a routine visit. Earlier visits had been made when breaches of the Solicitors' Investment Business Rules had been pointed out, advice had been given and requests that appropriate action be taken.

3. The report of the visit revealed the following specific matters. It was noted that whilst the firm had prepared a client questionnaire to aid compliance with the provisions of Rules 9(1) and (5) it did not always contain all the information that had been ascertained by the respondent in the course of her duties. For instance on the file of GMB the fact find failed to record that the client was a beneficiary with £100,000 as an interim distribution from an estate with another unspecified amount to come, so the firm was in breach of Rule 8(5) as the firm's client questionnaire was placed on the central register in order to comply.
4. Some files were located in the respondent's drawer, separate from the filing cabinet where files were normally kept, where further concerns were raised. In the matter of Mr and Mrs R, the file had a minimal amount of information supplied by a fee earner in the firm, who had referred that matter to the respondent and a blank fact find, with other blank forms. Also on the file was a leaflet and application form for a Scottish Amicable Distribution Bond, and three quotes relating to Scottish Amicable Distribution Bonds.
5. The suitability of investments arranged by the firm was considered. An analysis of the investments arranged by the firm since a previous monitoring visit indicated that 67 capital investments had been arranged, and of those 41 were Distribution Bonds, 10 were Capital Investment Bonds and 2 were Investment Bonds of another type.
6. Of the 41 clients dealt with only 3 did not have some form of investment bond arranged for them.
7. The approach of the respondent to the recording and provision of Best Advice was inadequate. The spread of life offices used by the firm was limited, there was no evidence for those life offices being used to the exclusion of others.
8. File notes often indicated that the choice of life office was down to the client for instance, stating that the client was happy with a Scottish company. Given the number of monitoring visits in which the respondent had been involved, that approach was wholly inadequate.
9. In one matter, it appeared that the respondent had given advice regarding non-specified investments without a client agreement being in place as required by Rule 10. The advice was given after the respondent sought the opinion of Scottish Provident on the sale of gilts. The respondent said in reaction to the gilts "it would be prudent to realise the gain and move into a more secure environment." It was felt to be inappropriate to seek advice in those circumstances from a life office.
10. A signed blank commission agreement was found and the client had signed a blank agreement.
11. There had been disclosure of a lesser amount of commission than that which was actually received in the matters of N (£3,000 disclosed, £3,150 received), CMH (£5,720 disclose, £5,775 received) and PAM (£6,500 disclosed, £6,825 received).

12. The conclusion reached by the Monitoring Unit was that the firm's systems of compliance, and the approach of the respondent were inadequate to ensure compliance with the Solicitors' Investment Business Rules and the Practice Rules.

The Submissions of the Applicant

13. The respondent had been employed as a financial consultant. She had previously been employed by solicitors, she thus had previous experience and was aware of the regulations. She had experience of earlier monitoring visits to a solicitor's office before being employed by Messrs. Sparling Benham and Brough. One of the partners in the firm very properly had been the Financial Services Compliance Officer. In fact the senior partner and the compliance partner had both been rebuked by the Solicitors Complaints Bureau.

The Submissions of the Respondent contained in the respondent's letter dated the 13th May 1996

14. "Further to my letter of the 2nd May, I have now studied the papers previously sent to me.

I do not intend to dispute any of the facts as set out in the statement of P H Cadman dated 13th March 1993. They may therefore be taken as admitted. I would however like to refer the Tribunal to a copy of a letter dated 20th March 1995 from my former firm of Messrs. Sparling Benham and Brough to the Solicitors Complaints Bureau which sets some of the facts in their context.

I do not believe that any of the clients of Sparling Benham and Brough for whom I arranged investments, have been prejudiced and to the best of my knowledge, there have been no complaints received by the firm in respect of my work. I do accept however that regrettably there had been breaches of the rules.

If the Tribunal feels that a Section 43 Order is necessary, then I will accept that. I would ask the Tribunal to consider though whether such an Order is necessary, bearing in mind that I am no longer involved in giving financial services advice and that the rules have changed in that I could not conduct discrete investment business for a firm of solicitors as I am not a qualified person. A section 43 Order would prevent me being employed by a solicitor even as office cleaner, which implies some element of dishonesty on my part, which has never been alleged.

I have no intention of seeking employment in a solicitor's office and I would ask the Tribunal to accept my undertaking to that effect.

Your letter of 29th April does not actually state whether it essential that I appear before the Tribunal in person. I will not be attending in person, though no discourtesy is intended by my absence. I would hope that the matter can be dealt with through the post and it may save the Tribunal and Mr. Cadman valuable time.

Please let me know of you require anything further from me.

Yours sincerely

signed Phyllis French (Mrs) "

The Tribunal FOUND all of the allegations to have been substantiated. The respondent in her capacity as a financial consultant was responsible for the breaches of the Solicitors Investment Business Rules. Clearly full compliance with those Rules was essential if the Law Society was to retain its credibility as a Financial Services Act regulator. It was of great benefit to solicitors that they should be regulated in the conduct of investment business by their own professional body and did not have to seek membership of a different regulatory body if they wished to continue to conduct investment business. The profession should be jealous of the Law Society's ability to be a financial services regulator and the Tribunal will always deal firmly with breaches of the Solicitors' Investment Business Rules. In the circumstances outlined in this case, the Tribunal considered it right to impose an Order pursuant to Section 43 of the Solicitors Act 1974 upon the respondent and ordered her to pay the costs of the application in a fixed sum.

The Tribunal noted what the respondent said in the respondent's letter. An order made pursuant to Section 43 would regulate the respondent's future employment within the solicitors' profession, it does not prevent her from being so employed. The Tribunal was not able to accept an undertaking from the respondent but have, of course, noted that the respondent did not intend to seek employment within the solicitors' profession. The Tribunal was grateful to the respondent for her letter.

DATED this 31st day of July 1996

on behalf of the Tribunal


G.B. Marsh
Chairman

*Findings filed with the
Law Society on the 2nd
day of August 1996*

