

IN THE MATTER OF IAN PETER ASHWORTH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D.J. Leverton (in the Chair)
Mr. A.H. Isaacs
Lady Bonham-Carter

Date Of Hearing: 14th November 1996

FINDINGS

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

An Application was duly made on behalf of the Solicitors Complaints Bureau (subsequently The Office for the Supervision of Solicitors) by Roger Field, solicitor of Inhedge House, Wolverhampton Street, Dudley, West Midlands on 24th July 1996 that Ian Peter Ashworth, solicitor of Monton, Eccles, Manchester 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.

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

- (i) failed to act towards other solicitors with frankness and good faith consistent with his overriding duty to his client;
- (ii) failed to deal, promptly or at all, with correspondence from the Solicitors Complaints Bureau.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 14th November 1996 when Roger Field, solicitor and partner in the firm of Messrs. Higgs & Sons of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands appeared for the applicant the respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed to the Chairman dated 10th November 1996 which is dealt with in detail hereunder under the heading "The submissions of the applicant".

At the conclusion of the hearing the Tribunal ORDERED that the respondent, Ian Peter Ashworth, solicitor of Monton, Eccles, Manchester M30 be suspended from practice as a solicitor for an indefinite period to commence on the 14th November 1996 and they further Ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £840.00 inclusive.

The facts are set out in paragraphs 1 to 6 hereunder.

1. The respondent, born in 1957, was admitted a solicitor in 1983. Until 12th April 1994 he practised in partnership under the style of O. Collier Littler & Kilbeg at 26 Crofts Bank Road, Urmston, Manchester. Thereafter he carried on in practice on his own account under the same style at the same address.
2. In August 1994 the respondent's practice was acquired by Collier Littler following which the respondent was employed by them as an assistant solicitor until his employment ended on 8th May 1995.
3. During the early part of 1994 the respondent acted for the vendor of a property at Flixton, Greater Manchester subject to the jurisdiction of the Court of Protection. Messrs. A.S. Matthews & Co., ("ASM") solicitors, acted for the purchasers. Contracts were exchanged on 29th April 1994.
4. ASM wrote to the Solicitors Complaints Bureau (the Bureau) on 12th December 1994 about the transaction claiming that the respondent had breached his duty to act with good faith towards them in that no authority had existed for the respondent to exchange contracts on 29th April 1994. The respondent had been less than frank when he spoke to ASM by telephone on 25th March 1994 about the position of the Court of Protection. The statements made by the respondent in a letter to that firm of 7th June 1994, namely, that a copy of the draft assignment had been forwarded by him to the Court of Protection for its approval had amounted to misinformation as the document had not been received by the Court of Protection until 24th June 1994.
5. The Bureau wrote to the respondent on 13th January 1995 for his explanation of the complaint. He did not respond to that letter nor to subsequent letters sent to him on the 28th February, 11th April, 11th September and 6th November 1995.
6. The Conduct Committee of the Adjudication & Appeals Committee of the Law Society considered the matter on 27th March 1996 when they decided to expect the respondent within fourteen days to provide a substantive reply to the complaint or to challenge their decision within the same period, failing which to refer the substantive

complaint and the respondent's failure to reply to the Bureau's correspondence to the Tribunal without further notice. The respondent was so informed by letter of 22nd April 1996.

The submissions of the applicant

7. In the submissions of the applicant the matters before the Tribunal revealed a bad case. The respondent had been guilty of deceitful conduct from one solicitor towards another. The Tribunal has always regarded a solicitor's non-response to correspondence addressed to him by his own professional body as a serious matter.

The submissions of the respondent
(his letter of 10th November 1996 referred to above)

8. "Dear Sir,

Firstly, I would ask you to accept my apologies for not attending the hearing in this matter. I am afraid that I cannot afford the fare to London at the present time.

Since ceasing to practise as a solicitor some 18 months ago I have attempted to effectively rebuild a life for myself, my wife and 2 young children. Having only been able to obtain part-time work for part of the period our savings are now reduced to a few hundred pounds.

With regard to the present matter, I have to say that I do not have a great deal of recollection of the events as they took place at a time when I was under a great deal of both personal and professional stress. In February of 1994 my then partner in the firm of O. Collier Littler & Kilbeg, Brian Dabulawieus, walked out of the firm at 9.30 on a Tuesday morning without notice leaving all his clients and the total business to be run by myself. I can see with hindsight, that I was not capable of running the business but at the time I simply tried to keep matters afloat and to protect the interests of all the firm's clients and staff, I was the only fee earner left.

One matter was the case in point where a client whose mother was incapable, came to see the firm about the property. The client did not wish to sell the property but as his mother was in a home the house was required to be sold to pay fees. The client, who had hoped to inherit the property, was far from keen on the idea and basically instructed that the sale be delayed as long as possible. The ultimate buyer was represented by Mr. Matthews. In attempting to go along with the wishes of my client, I may well have committed errors of judgment but the sale was eventually completed in, I believe, the summer of 1994. At no time either during or after the transaction did my client express anything other than complete satisfaction at how the matter had been dealt with other than to express disappointment that the sale had had to go through.

As stated, I was at the time under tremendous personal and professional pressure which unfortunately resulted in the disposal of the firm after an intervention. I did not receive any payment for the business, and at no time was there even any suggestion of financial irregularity. In fact over 2 years later I am still awaiting a statement of

account from the Law Society/Solicitors Complaints Bureau as to the £7-8,000 removed without notice by them from the old firm office account!

Having left the profession over 18 months ago I now feel I am again under pressure from the SCB in this matter. I have no more savings and could not pay a fine in this matter. I would be quite happy to ask to have my name removed from the Roll and as I informed the Society in 1995 when returning a notification as to why I was not renewing my Practising Certificate, which they lost!, I have no intention of ever practising again.

I would add that having lost my notice of non-renewal the Society/SCB earlier this year wrote threatening proceedings for practising without a certificate and since forwarding duplicate several months ago I have again not even received the courtesy of a reply!

This does seem somewhat unfair that I continue to be persecuted for simply trying to keep a firm afloat in the interests of the clients after my partner simply walked away and left his clients and that whilst acknowledging that I made mistakes I obtained no gain whatsoever and infact myself and my family have paid a heavy price and continue to do so.

Thank you for your consideration. If I appeared before you I would have sought to plead the above in mitigation in some more detail. However, I must await your consideration. As stated we have used our little capital over the last 18 months to supplement a small level of income and I cannot pay a fine or reimburse costs either. If you could see your way to close or leave the matter on file, I would be most grateful and it would finally allow me to put the whole matter behind me and my family and if you impose a reprimand I will be seeking to apply to remove my name from the Roll in any event.

Yours faithfully Signed: Ian P. Ashworth"

The Tribunal FOUND the allegations to have been substantiated, in deed they were not contested.

On 5th April 1994 the Tribunal had found the respondent to have been guilty of conduct unbecoming a solicitor in the following circumstances, namely that he had -

- (i) been guilty of delay in concluding the administration of an estate;
- (ii) failed to reply to letters from the Solicitors Complaints Bureau

following which the respondent was Ordered to pay a fine of £1,500.

On 23rd July 1994 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following circumstances, namely that he had -

- (i) failed to comply with a resolution of the Conduct Committee of the Adjudication & Appeals Committee of the Bureau;
- (ii) been guilty of unreasonable delay in the conduct of professional business.

In its Finding dated 23rd July 1994 the Tribunal expressed concern that the respondent had only such a short time before the hearing had allegations arising in broadly similar circumstances substantiated against him. It was however accepted that the allegations on that occasion did not reflect the most serious sort of professional misconduct and if the allegations had been dealt with at the same time as those found substantiated in April 1994 the Tribunal would not have imposed a greater penalty. It was for that reason that the Tribunal thought it right to impose a reprimand. The Tribunal went on to say that if the respondent were to appear before them having similar allegations laid against him in the future the Tribunal would not feel able to deal with the matter with such leniency.

On 15th May 1995 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had been guilty of conduct unbefitting a solicitor in the following circumstances, namely that he had -

- (i) practised as a solicitor whilst not having in force a Practising Certificate;
- (ii) failed to comply with a condition subject to which his Practising Certificate was granted or otherwise had effect by practising on his own account;
- (iii) failed to reply to a letter from the Bureau concerning his professional conduct.

On that occasion the Tribunal said it was on the face of it a matter for considerable concern that the respondent had appeared before them on a third occasion. However, the Tribunal again recognised that the allegations apparently arose from the same circumstances which led to the earlier allegations. The Tribunal noted that the financial affairs of the respondent's firm were entirely in order. That said a lot for his integrity and concern for clients' affairs. The Tribunal noted that the respondent was placed in an impossible position in terms of carrying a work load which had been imposed upon him as, indeed, had his period of sole practice. The respondent's failure to respond to letters from the Bureau put that body in a position where it could take no steps at all. The respondent was a solicitor and had to shoulder the responsibility of being a member of the solicitors' profession. The Tribunal could not overlook his uncertificated practice or practising in contravention of the condition on his Practising Certificate, nor indeed his failure to reply to correspondence addressed to him by his own professional body. The Tribunal expressed pleasure to note that the respondent had been employed by the firm taking over his practice upon terms which appeared to be entirely satisfactory. The respondent had already been warned that the Tribunal could not on the third occasion adopt a lenient view and for that reason the Tribunal ordered the respondent to pay a fine of £2,500 and the costs of and incidental to the application and enquiry, fixed in the sum of £745.

The Findings of the Tribunal

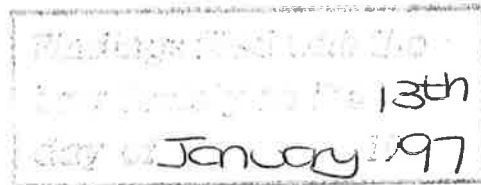
The Tribunal has little to add on this the fourth occasion that it has been asked to consider allegations substantiated against the respondent. The Tribunal has reached the conclusion that the respondent suffers from an inability to cope with the pressures of practice that ill-serves the best interests of his clients and exposes the public to risk. Such behaviour damages the good reputation of the solicitors' profession. In the circumstances and in the light of the letter addressed by the respondent to the Chairman of the Tribunal, the Tribunal considered it appropriate to suspend the respondent from practice for an indefinite period of time and further ordered that he should pay the costs of and incidental to the application and enquiry.

DATED this 2nd day of January 1997

on behalf of the Tribunal



D.J. Leverton
Chairman



13th
day of January 1997