

IN THE MATTER OF JOHN ANTHONY JAMES BRAITHWAITE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. G.B. Marsh (in the Chair)  
Mr. A.G. Ground  
Lady Maxwell-Hyslop

Date Of Hearing: 26th June 1997

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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 Office for the Supervision of Solicitors by Gerald Malcolm Lynch, solicitor formerly of 16 Warrior Square, Southend-on-Sea, Essex but subsequently of Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, Essex on 27th November 1996 that John Anthony James Braithwaite, solicitor of East Barnet, Hertfordshire 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 -

- (i) been guilty of deception alternatively improperly misled clients in connection with their affairs and in his practice as a solicitor;
- (ii) been guilty of delay alternatively failed to deal with reasonable expedition with clients' affairs;

- (iii) by virtue of the afore-mentioned brought the solicitors' profession into disrepute and had been guilty of conduct unbefitting a solicitor.

The application was heard at the Court Room, No. 60 Carey Street, London WC2 on 26th June 1997 when Gerald Malcolm Lynch, solicitor and partner in the firm of Messrs. Drysdales of Cumberland House, 24-28 Baxter Avenue, Southend-on-Sea, Essex appeared for the applicant and Michael Massih of Counsel, instructed by the respondent, appeared for the respondent.

The evidence before the Tribunal included the admissions of the respondent, his oral evidence and, the oral evidence as to his character of Mr. Georgiou and Miss Kaashi and exhibit "JAJB1", a bundle of testimonials in support of the respondent. The respondent, however, denied that he had been guilty of deception in allegation (i).

At the conclusion of the hearing the Tribunal ORDERED that the respondent John Anthony James Braithwaite, solicitor of East Barnet, Hertfordshire EN4 be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry, fixed in the sum of £2,380.05 inclusive.

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

1. The respondent, who was forty-one years of age, had been admitted a solicitor in 1983.
2. At the material times he practised as a solicitor in the firm of Lizzimore Braithwaites at 65A Seven Sisters Road, Holloway, London. The Law Society intervened into that practice. Thereafter the respondent practised in the firm of Salfiti & Co. and at the time of the hearing he was employed as an assistant solicitor with Messrs. Georgiou Nicholas of 22 John Street, London WC1.
3. On 30th January 1995 Messrs. Bolt Burdon, solicitors of Islington wrote to the Solicitors Complaints Bureau ("the Bureau") on behalf of their client Miss R. The respondent had represented Miss R in proceedings in the High court. A Writ had been issued in February 1990 and served within a year of its date of issue. On a number of occasions the respondent had advised Miss R as to the alleged position reached in the litigation and in particular had made the following representations -
  - (a) In October 1992, that there would be a settlement of the action;
  - (b) In January 1993, that an offer of settlement had been made. £10,000 was then paid by the respondent to the client;
  - (c) In October 1993, an indication that the matter would settle for a sum in excess of £93,000;
  - (d) In November 1993, the respondent paid to the client a further £10,000;

- (e) In August 1994, judgment had been obtained and enforcement proceedings were to be taken and the client should receive £81,000. The respondent then paid a further £4,000 to the client;
  - (f) In December 1994, the client was told that there was no case to pursue and that Legal Aid would not be available.
4. The respondent in fact had taken no action in connection with the proceedings since April 1990 and the representations made by him to Miss R were all false. The moneys received by Miss R had been paid from the respondent's own resources.
5. In response to a letter addressed to the respondent by the Bureau in October 1995 in his reply of 7th November the respondent said, "I regret to say that the substance of the complaint by Bolt Burdon is substantially correct. I have to accept, as I say, that the substance of the complaint insofar as the fact that Miss R was misled is concerned is correct."
6. On 19th August 1996 the respondent wrote again expanding his explanation and again accepting that he gave misleading reports. The respondent further accepted that he had allowed the matter to remain dormant and it had not received his attention after April 1990. The respondent had valued the client's claim to be worth at best £30,000 and felt a sense of obligation that he should pay that sum to her from his own resources. He accepted full responsibility. He confirmed the position in oral evidence before the Tribunal.
7. On 13th July 1995 Messrs. Austin Ryder & Co., solicitors of Enfield wrote to the Bureau about the respondent's conduct on behalf of their clients Mr. & Mrs. G. Mr. & Mrs. G had instructed the respondent in 1981 to pursue a claim against the makers of a slow cooker which had caused a fire leading to considerable damage.
8. A Legal Aid Certificate had been granted in February 1992. There was then delay until an Opinion of Counsel was provided to the clients in January 1993. No further steps were taken until July or August of that year.
9. Throughout this time, the clients pressed the respondent for information. Inter alia the respondent made the following representations to Mr. & Mrs. G -
- (a) November 1993 - the respondent said that he had applied for a Court hearing;
  - (b) February 1994 - the clients were told that the hearing should be in June of that year;
  - (c) July 1994 - the clients were told that a hearing date had been fixed for the 25th August in "Bloomsbury Avenue". A check by the client revealed that such address did not exist;
  - (d) 24th August 1994 - the clients were told that there was no need to go to Court as the defendants had made an offer of £8,250 but the respondent thought he could obtain more;

- (e) Mid-September 1994 - the respondent said the offer had increased to £9,200 which the clients agreed to accept. The respondent told the clients that it would take fourteen to twenty-eight days to receive the money;
  - (f) On chasing up the respondent, the clients were told that the cheque had not been received and various excuses were advanced. They were then told that the insurance company concerned had stopped the cheque.
  - (g) November 1994 - the respondent gave the clients a cheque for £700.
  - (h) December 1994 - the respondent told the clients that the defendants were not going to pay but he thought he could get an "interim" payment of £3,000 and indeed that sum was paid to the clients.
  - (i) The clients subsequently contacted the makers of the slow cooker who knew nothing of the claim, nor did their insurers;
  - (j) January 1995 - the clients demanded all paperwork from the respondent. The respondent said the papers were "in chambers". Later that month, the respondent confessed to the clients that there were no papers and that there was no Court case. He gave them two cheques for £2,000 both of which were returned marked "refer to drawer".
10. On 4th September 1995 the Bureau wrote to the respondent for explanation. On 7th November 1995 the respondent replied to say that he accepted the substance of the complaint by Mr. & Mrs. G and that he had indeed misled them concerning their potential Court action and that he regretted the position.
11. By letter of 19th August 1996 the respondent wrote to the Bureau confirming that he had misled Mr. & Mrs. G as to the progress of their case and that he had paid money to them from his own resources. Papers had been lost. The clients had been advised to instruct other solicitors.

#### **The submissions of the applicant**

12. It was clear that the respondent had deliberately and with calculation deceived or misled clients as to the position in relation to their affairs. This had been done over a period of time and on numerous occasions. In addition, the respondent was clearly responsible for unexplained and extreme delay in the pursuit of clients' instructions. Both the misleading of clients and the inactivity in the conduct of clients' affairs were grossly improper and were calculated to bring the solicitors' profession itself into disrepute.

#### **The submissions of the respondent**

13. A submission was made on behalf of the respondent concerning the way in which allegation (i) had been framed. It was argued that the difference between "deception" and the alternative "improperly misled" was that deception was a more serious

allegation. It was accepted that any misleading of a client was improper and did amount to conduct unbecoming a solicitor, but deception was more serious and necessarily involved a gain on the part of the deceiver.

14. The respondent was an experienced and capable criminal practitioner. After qualifying in 1983 and a period of working as an assistant solicitor, the respondent set up in practice on his own account under the style of Braithwaites in North London in 1989. A number of staff with whom he had previously worked and many clients, followed him. His practice was predominantly in the field of criminal law, but he also took on some civil work.
15. The respondent was subject to the rigours of a legal aid criminal practice and the considerable demands placed on a solicitor's time including appearances in Court and call out to police stations frequently outside normal office hours and over seven days of the week.
16. In September 1991 the Law Society resolved to intervene into the respondent's practice. He was given a day or two to dispose of his practice before the intervention became effective. He had met another sole practitioner, the nature of whose practice appeared to be one which would compliment that of the respondent. He disposed of the practice to Mr. Lizzimore, the other sole practitioner, without financial consideration and Mr. Lizzimore then became a sole practitioner employing the respondent as an assistant solicitor.
17. The respondent continued to be the subject of extreme pressure of work. In addition, Mr. Lizzimore did not take over the civil work as the respondent had anticipated. Mr. Lizzimore did not perform as the respondent had anticipated and, it transpired, he fraudulently misappropriated clients' money and indeed since had been struck off the Roll of Solicitors by the Tribunal.
18. In addition to spending exceedingly long hours in giving clients and their affairs close attention, the respondent took a keen interest in his staff encouraging them to undertake further education to promote their careers. He had paid salaries from his own pocket when Mr. Lizzimore failed so to do. The respondent was held in high esteem by his clients, his staff and his fellow professionals, including barristers instructed by him.
19. The respondent was described as a man who found it hard to say, "no". He had felt sorry for Miss R whom he described as "nice, but highly strung". He had been unable to face her disappointment in being told that her claim was unlikely to succeed, and had decided to make the payments to her from his own pocket at the same time encouraging her to understand that the monies arose from her successful litigation. He told the Tribunal that he was not "flush with money" at the time, but he could afford to make those payments.
20. In the matter of Mr. & Mrs. G, the respondent's actions were triggered by the loss of the file. It had taken six months to obtain experts' reports. He had calculated the damage suffered by Mr. & Mrs. G at £10,000 on the basis of the loss assessor's report. The respondent had felt embarrassed. The respondent accepted that some of the

cheques handed to Mr. & Mrs. G had not been cleared - one had been drawn on the respondent's wife's account.

21. The respondent was a married man with three children whose ages ranged from six years to a few days. At the material time the respondent not only was subjected to extreme pressure of work, but his step-mother had died in April 1991 and he gave much time to support his father, who lived in Coventry, who was very distraught. Later his father became terminally ill necessitating many visits on the part of the respondent who was himself distressed by his father's death in September 1995.
22. The respondent's personal assistant gave evidence to the Tribunal and referred to the enormous care and concern the respondent had for his clients and the loyalty and concern that he had for his staff which manifested itself in such things as financial assistance and help with study.
23. The respondent's current employer spoke of his popularity with staff and clients who had a great loyalty to him. He was a competent, conscientious, caring and capable solicitor experienced in the field of criminal law.
24. The respondent's motives for his actions had been to assist and support clients whom he considered to be deserving of it - there was no thought of an actual personal gain on the part of the respondent.
25. The Tribunal was invited to weigh the circumstances surrounding the respondent's behaviour and to give him credit for his early and unequivocal admissions and his contrition and regret which were self-evident.

### **The Findings of the Tribunal**

The Tribunal FOUND all of the allegations to have been substantiated. Allegation (i) (which was framed in the alternative) was found to be substantiated in that the respondent had been guilty of deception in connection with his affairs and in his practice as a solicitor. The Tribunal considered the respondent's argument that deception was the greater of the two alternatives and that deception could not be established when there was an element of personal gain. The Tribunal's view was that personal gain was not a necessary element of deception. In any event the respondent had achieved a gain by the deception in that he had gained time, he had postponed the discovery of his wrong doing, he had saved face and he had postponed a potential claim for negligence.

### **Previous appearances before the Tribunal**

On 16th July 1992 the Tribunal found the following allegations to have been substantiated against the respondent. The allegations were that the respondent had -

- (i) contrary to the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1986 drawn or permitted to be drawn from client account monies which by the said Rules were not available to be so drawn and had utilised the same for his own benefit alternatively for the benefit of clients not entitled thereto;

- (ii) failed to act in accordance with an undertaking given in his practice as a solicitor or had been guilty of unreasonable delay in so acting;
- (iii) by virtue of the aforementioned had been guilty of conduct unbefitting a solicitor.

In 1992 the Tribunal remarked that the respondent appeared to have adopted a somewhat relaxed attitude towards the reliable and accurate keeping of records relating to clients' money. Such an attitude was unacceptable as it went to the heart of the fundamental precept that solicitors should be absolutely in control of and record completely clearly, honestly and properly dealings with clients' money.

The Tribunal felt that the respondent had allowed himself to be lulled into a lackadaisical frame of mind by another firm of solicitors acting in a conveyancing transaction who had not behaved in a professional manner. That was unacceptable. The Tribunal were able to accept that the breach of undertaking was not the result of any dishonest intent, but followed a situation of muddle and confusion. The Tribunal had adopted a more lenient stand than it otherwise would have done because the respondent had come close to suffering an intervention into his practice and was no longer permitted to practise as a sole practitioner. They imposed a financial penalty of £1,000 and ordered the respondent to pay the costs of the applicant.

On 21st December 1993 the Tribunal FOUND the following allegations to have been substantiated against the respondent. The allegations were that the respondent had -

- (a) practised as a solicitor in breach of a condition imposed upon his Practising Certificate by the Law Society pursuant to the provisions of Section 12 of the Solicitors Act 1974;
- (b) failed alternatively failed with reasonable expedition to reply to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (c) as a result of the afore-mentioned been guilty of conduct unbefitting a solicitor.

On that occasion the Tribunal said they were able to accept that the respondent had not been held out as a partner with any dishonest intent. They were able to accept that the respondent simply had not applied his mind to the situation.

The Tribunal took the view that the allegations did not reflect matters of the utmost gravity, but wished to make it very plain indeed that a solicitor might not ignore a condition placed upon his Practising Certificate by the Law Society. A financial penalty of £1,500 was imposed upon the respondent and he was ordered to pay the applicant's costs.

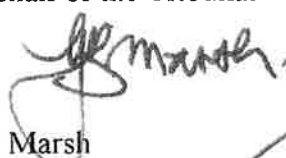
### **Findings and Order - 1997**

Although the previous Findings against the respondent (in 1992 and 1993) involved less serious allegations, the Tribunal was nevertheless dismayed to find the respondent

appearing before the Tribunal yet again. On this occasion the respondent has been found guilty of deception. That is a most serious matter. The solicitors' profession is based upon the precept that a member of the profession should at all times act with complete honesty, probity and integrity. Members of the public should be able to trust and to rely implicitly upon the word of a solicitor. A solicitor who breaks that trust tarnishes the reputation of the profession and is not worthy of remaining a member of such profession. In this particular case, the Tribunal weighed in the balance most carefully the respondent's reputation as a criminal lawyer and the esteem in which he is held by his employer, by other members of staff and by others. Having done so, however, the Tribunal consider that they have a duty to protect the interests of the public, the good name of the solicitors' profession and the public's perception of that profession and it is in those circumstances that the Tribunal felt it right and proper to make an order to strike the respondent off the Roll. They further ordered that he pay the costs of and incidental to the application and enquiry, in a fixed sum.

DATED this 5th day of August 1997

on behalf of the Tribunal

  
G.B. Marsh  
Chairman

Findings filed with the  
Law Society on the 15<sup>th</sup>  
day of August 1997