

IN THE MATTER OF DAVID ALAN BARROWCLOUGH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date Of Hearing: 18th November 1997

FINDINGS

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

An application was duly made on behalf of the Office for the Supervision of Solicitors by Geoffrey Williams solicitor of 36 West Bute Street, Cardiff on the 28th November 1996 that David Alan Barrowclough solicitor of Blackpool, Lancashire might be required to answer the allegations contained in the statement which accompanied the application and that such orders be made as the Tribunal should think right.

The applicant made a first and second supplementary statement respectively on the 3rd July 1997 and the 12th November 1997. The allegations below are the allegations contained in the original and two supplementary statements.

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. drawn monies out of a client account otherwise than in accordance with Rule 7 Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;

- b. failed to pay clients' funds into client account contrary to Rule 3 Solicitors Accounts Rule 1991;
- c. rendered an account to an Executor and beneficiary which was false and misleading;
- d. used monies received from the Legal Aid Board for his own purposes;
- e. further drawn monies out of a client account otherwise than in accordance with Rule 7 Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules;
- f. been convicted of offences of dishonesty and sentenced to imprisonment in respect thereof.

The application was heard at the Court Room No. 60 Carey Street London WC2 on the 18th November 1997 when Geoffrey Williams solicitor and partner in the firm of Cartwrights Adams & Black of 36 West Bute Street, Cardiff CF1 5UA appeared for the applicant and the respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the respondent contained in his letter dated the 13th November 1997.

On the 24th June 1997 the Tribunal agreed that the matter might stand adjourned as a second Investigation Accountant's report had been made and further serious allegations were raised therein and it was likely that the respondent would be charged with criminal offences to be tried in the Crown Court. It appeared probable that criminal proceedings would be found to be on all fours with the disciplinary proceedings. At the time of the mention of the matter before the Tribunal there had been an intervention in the respondent's practice by the Law Society and he was suspended from practice as a result.

The Tribunal noted that the allegation in the third statement of the applicant was that the respondent had been convicted of serious criminal offences involving dishonesty and a custodial sentence had been imposed upon him. In view of that in order to save costs the Tribunal noted the facts supporting the original and first supplementary statement but have not set them out in detail in these Findings.

At the conclusion of the hearing the Tribunal Ordered that the respondent David Alan Barrowclough formerly of Blackpool, Lancashire solicitor but subsequently of Wotton Under Edge Glos. GL12 solicitor be Struck Off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

The costs awarded by the Tribunal were to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 8 hereunder:-

1. The respondent, who was born in 1967, had been admitted a solicitor in 1994. At the material times he practised as a solicitor on his own account under the style of Collinson Barrowclough & Company at 53, Devonshire Road, Blackpool, Lancashire.

He also for a time acted as a consultant to Messrs Samuels Block, Solicitors at 22 Whitegate Drive, Blackpool, Lancashire. The Law Society had granted a waiver to the respondent enabling him to practise alone before he had been admitted as a solicitor for a period of three years upon the recommendation of Mr Collinson who was prevented from continuing in practice owing to ill health. Mr Collinson's recommendation was supported by other local practitioners.

2. Upon notice duly given to the respondent an inspection of his books of account was carried out by the Investigation Accountant of the Law Society. The Tribunal had before it a copy of the Investigation Accountant's Report dated the 24th July 1996. The respondent did not disclose the existence of his firm's office account with Midland Bank. The Investigation Accountant said no reliance could be placed upon the veracity of the entries shown in the clients' ledger and he was unable to express an opinion as to the liabilities to clients. The respondent agreed with the Investigation Accountant that a minimum shortage of £37,539.70p existed on client bank account. Contributing to the minimum cash shortage were the facts that clients' funds of £26,698.88p had been lodged in office bank account and improper transfers had been made from client to office bank account totalling £10,840.82p.
3. The funds improperly lodged in client bank account had been monies received from the Department of National Savings in an estate of a deceased person. Those monies had not been included in the estate accounts. When questioned the respondent said that he was waiting to receive the proceeds of income bonds from the Department of National Savings. The monies already had been received and had been paid into the undisclosed Midland Bank Account. Further accounting deficiencies were revealed in that report.
4. As a result of the matters referred to in the Investigation Accountant's report the Law Society intervened into the respondent's practice and some ninety seven of his client files were taken over by Messrs. Samuels Block. That firm had complained to the Office for the Supervision of Solicitors (The Office) in relation to certain of those files. As a result a further inspection was carried out by the Investigation Accountant of the books of account of Messrs Samuels Block. The partners to that firm reported to the Investigation Accountant that after taking over the respondent's files it soon became evident that there were financial irregularities in a number of them. In addition they had been contacted by a number of the respondent's former clients, for whom they had not been asked to act, enquiring as to who had conduct of their matters as the respondent had abandoned his practice. The partners of Messrs. Samuels Block agreed with the Investigation Accountant that a minimum shortage of £10,622.40p existed on client bank account as at the 31st July 1996 in respect of matters which the firm had taken over from the respondent. The minimum cash shortage arose because of sums received in respect of disbursements which remained unpaid totalling £8,871.17p and improper transfers totalling £1,751.23.
5. The partners told the Investigation Accountant that the respondent had submitted Legal Aid claims in June 1996 which he later rescinded when the quantum of those claims was questioned. They said that several claims made to the Legal Aid Board by the respondent for "costs on account" at earlier dates, exceeded the amount of costs that could properly be claimed on those matters.

6. On the 11th September 1997 the respondent appeared in the Preston Crown Court. He pleaded guilty and was convicted of twelve offences of theft. He was sentenced to four years imprisonment on each count to run concurrent.
7. A confiscation Order was made for £218,635.00 payable within nine months with three years imprisonment in default in payment.
8. The Tribunal had before it a copy of the Certificate of Conviction.

The submissions of the applicant

9. The respondent had been convicted of serious criminal offences involving dishonesty and had been sentenced to a term in prison. Effectively the respondent had been guilty of theft from probate cases. There was no doubt that he had adopted a very dishonest course which amounted to conduct unbefitting a solicitor of the most serious kind.
10. The applicant believed that the convictions arose, at least in part, out of the matters referred to in his original and first supplementary statements.
11. The Law Society's Compensation Fund had paid out £101,813.80p and pending claims totalled approximately £106,000.00.

The submissions of the respondent -

(The respondent's letter of the 13th November 1997)

12. "Dear Sirs,

Re: Disciplinary Tribunal 18/11/1997 - D A Barrowclough

I have been informed today of a Disciplinary Tribunal to be heard on 18/11/97. As I am unable to attend I wish to submit this letter to the Chairman of the Tribunal.

I acknowledge that I am guilty of conduct which is likely to result in the Tribunal Striking me Off the Roll. I do not propose to say anything that attempts to diminish the seriousness of the offences. Furthermore I apologise for that conduct.

In mitigation I would however like to offer an explanation for my conduct. Having been qualified as a solicitor for a matter of perhaps two months, (after my articles had been shortened by a factor of six months) I was allowed to practise on my account on my own. At the time I felt confident in my ability so to do. Unfortunately, I was immediately faced with financial pressures the like of which I had not expected to face. In essence I found myself to be too inexperienced to deal with those problems and to keep the firm going I had recourse to the clients account. I should not have done this, and it would have been obvious to anyone inspecting the books, what had been going-on. However, at the time I was under considerable stress and could see no other way out of the predicament.

When questioned by the police I made a full and frank disclosure of what had gone on and assisted them with their investigation.

Furthermore, I have been able to repay in full, the monies outstanding by recourse to selling my properties and by using all the savings that I had. Thus rendering myself homeless when I leave prison with no money and no savings.

At the time of the offences the pressure of running the practice had got so great that I was receiving psychiatric treatment. I was in fact suicidal and was admitted to a psychiatric hospital for three months and received further outpatient treatment for a period of twelve months.

I have now been sentenced to a period of four years imprisonment.

My legal career is clearly ended and I am financially ruined in addition to having been deprived of my liberty.

In the circumstances there is very little that I can add in mitigation, and would simply ask that this letter is read out on my behalf at the Disciplinary hearing.

Yours faithfully

Signed.

D A Barrowclough

The findings of the Tribunal

The Tribunal Found all of the allegations to have been substantiated. The Tribunal have noted that the respondent was a young and inexperienced practitioner faced not only with the pressure of being a solicitor in private practice but with the additional burden of being a sole principal. That being said, there was no doubt that the respondent had been guilty of dishonesty at the highest end of the scale and such behaviour would not be tolerated by the solicitors' profession. The Tribunal made an order striking the respondent off the roll of solicitors and further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed. The Tribunal wish to make it clear that their order for the payment of costs included the costs of the Investigation Accountant of the Law Society.

DATED this 17th day of December 1997

on behalf of the Tribunal



J R C Clitheroe
Chairman

