

IN THE MATTER OF RICHARD LLEWELYN SUTTON OWEN, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D E Fordham (in the Chair)

Mr. J C Chesterton

Mr. M C Baughan

Date Of Hearing: 17th July 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 Jonathan Richard Goodwin solicitor of 19 Hamilton Square, Birkenhead on the 27th March 1997 that Richard Llewelyn Sutton Owen solicitor of 145 Front Street, Chester-le-Street, Co. Durham might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

On the 14th May 1997 the applicant made a supplementary statement containing further allegations. The allegations set out below are those contained in the original and supplementary statements.

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

- (i) failed to pay Counsels' fees as the same became due or at all.
- (ii) been guilty of unreasonable delay in the conduct of professional business;
- (iii) failed to comply with a Direction made by the Compliance and Supervision Committee contained in its Resolution dated 8 January 1997;
- (iv) behaved in a manner that was unbecoming a solicitor of the Supreme Court;
- (v) failed to keep accounts properly written up for the purposes of Rule 11 of the Solicitors Accounts Rules 1991;

- (vi) contrary to Rule 8 of the Solicitors Accounts Rules drew money out of client account other than as permitted by Rule 7 of the said Rules;
- (vii) utilised clients' funds for his own purposes;
- (viii) misappropriated clients' funds;
- (ix) obtained clients' funds purportedly for costs in circumstance that he knew or ought to have known he could not justify.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 17th July 1997 when Jonathan Richard Goodwin solicitor and partner in the firm of Messrs. Percy Hughes & Roberts, 19 Hamilton Square, Birkenhead appeared for the applicant and the respondent appeared in person.

The evidence before the Tribunal included the admissions of the respondent and exhibit "RLSO1" (a letter from the respondent's accountants).

At the conclusion of the hearing the Tribunal ordered that the respondent Richard Llewelyn Sutton Owen of 32 Park Road North, Chester le Street, Co. Durham (formerly of 145 Front Street, Chester le Street, Co. Durham) 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 £3,435.11p inclusive.

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

1. The respondent was admitted as a solicitor in 1972 . At the material times he carried on in practice on his own account under the style of Montgomery & Owen at 145 Front Street, Chester le Street, Co. Durham. The Law Society intervened into the respondent's practice following its resolution so to do on the 19th December 1996.
2. The respondent was adjudicated bankrupt in February 1997
3. On 21st November 1995 the Accounts Manager of Broad Chare Chambers, Newcastle upon Tyne complained to the Solicitors Complaints Bureau (the predecessor of the Office for the Supervision of solicitors - referred to later as "the Bureau" and "the office" respectively) that the respondent had failed to pay Counsels' fees as same became due or at all, notwithstanding fee notes having been rendered and requests for payment made on numerous occasions.
4. The respondent instructed Mr E A Elliot and Mr E C Duff of Counsel. Both Counsels' instructions were terminated on 11 May 1995, with full knowledge that Counsel had prepared the case for trial which involved a substantial amount of work. Fee notes were rendered following the conclusion of the matter in respect of Mr E A Elliot in the total sum of £6,668.13 in relation to work undertaken between October 1993 and May 1995 and in respect of Mr E C Duff in the total sum of £5,551.88 in respect of work undertaken between November 1993 and May 1995, producing a total sum of £12,220.01 due to Counsel.
5. The respondent failed to discharge the fees due to Counsel despite reminders sent to him in respect of Mr E A Elliot's fees on 26 April 1995, 15 May 1995, 10 July 1995,

22 August 1995, 24 October 1995, and 21 November 1995 and in respect of Mr E C Duff's fees on 17 May 1995, 10th July 1995, 22 August 1995, 26 September 1995, 6 November 1995 and 21 November 1995.

6. The Accounts Manager of Counsels' Chambers complained to the Bureau which wrote to the respondent on 13 December 1995 with a request that arrangements be made to settle Counsels' fees within seven days from the date of the letter. The respondent failed to discharge Counsels' fees and the Bureau wrote to him again on 24 January 1996. Despite an indication from the respondent to the Bureau over the telephone that he was attempting to raise the money to discharge the fees, the fees were not discharged and the Bureau wrote to him on 24 June 1996 advising him that if they were not discharged in full with fourteen days from the date of the letter, his conduct would be referred to the appropriate committee. The respondent failed to discharge Counsels' fees and accordingly the matter was referred to the Professional Regulation Casework Sub Committee. On 8 January 1997 the Committee resolved that they expected the respondent to discharge within fourteen days all fees currently outstanding in respect of privately funded matters and to notify the Office (as it had then become) that he had done so, failing which disciplinary proceedings would be instituted without further warning.
7. The respondent had not discharged Counsels' fees in part or at all.
8. Upon due notice to the respondent the Investigating Accountant of the Law Society carried out an inspection of the respondent's Books of Account commencing on 4th December 1996. The Tribunal had before it the Investigating Accountant's Report dated 18th December 1996, which showed that the respondent's books of account did not comply with the Solicitors Accounts Rules 1991 and they contained numerous improper transfers from client account to office bank account. It was considered impracticable to ascertain the true extent of the respondent's liabilities to clients, but it was possible to compute a minimum cash shortage in the sum of £61,630.13. The minimum cash shortage was comprised of the following:-
 - a) Improper transfers from client to office bank account in respect of fictitious bills of costs in the total sum of £46,148.13 in connection with the administrations of three estates.
 - b) Improper transfers from client to office bank account in respect of bills not delivered to clients in the sum of £13,865 during the period 8th February 1996 to 31st October 1996.
 - c) Legal Aid funds improperly retained in office bank account in the sum of £1,617.00.

The submissions of the applicant

9. The respondent agreed the existence of a cash shortage with the Investigation Accountant. The respondent had admitted all allegations both in correspondence with the Bureau and the Office and before the Tribunal.
10. The respondent had been appointed an executor in the three estates in respect of which fictitious bills had been drawn. The bills were fictitious to the extent that the respondent was unable to justify the amounts claimed. There was an admitted

substantial cash shortage. In the submission of the applicant the allegations and the facts supporting them revealed a serious state of affairs.

The submissions of the respondent

11. With regard to the unpaid Counsels' fees the respondent had been instructed by a husband, wife and their two adult children, who had been long-standing clients, when they were charged with conspiracy to publish obscene videos. The case was committed for trial at the Crown Court. None of the clients was legally aided. Two Counsel were instructed because of a potential conflict between some members of the family. The costs relating to the Magistrates Court proceedings and some additional costs were paid by the clients. The respondent believed his clients appreciated that the costs would be high and he had no reason to doubt that they would pay the costs. The respondent had not discussed the level of fees with Counsel and it was only shortly before the hearing that Counsels' clerk indicated that the fees would be likely to be well in excess of £20,000. The clients could not afford that level of costs and instructed the respondent to cancel Counsels' instructions. Other arrangements were made for the trial. The clients assured the respondent that the fees would be paid but despite repeated requests and promises, that was not done. The respondent had been badly let down by clients who had previously always been reliable. The respondent accepted that as a matter of professional conduct he was personally responsible for the fees.
12. With regard to the costs in the matter of the three estates, a number of transfers had been made over a period of time. The transfers had been made with bills being raised and entered as interim accounts in respect of each of the amounts transferred and appropriate ledger entries made. The respondent had not specifically checked the running total of costs at the time of each transfer and had not been aware of the totals. There had been no deliberate dishonesty involved although the respondent accepted that he should have been more vigilant in monitoring the relevant accounts. As a result there had been overcharging. He accepted the overall total of costs transferred could not be justified. The respondent had not covered up or hidden transactions or falsified figures. All of the relevant entries and documents in respect of the transfers were in place. The respondent considered that the justifiable level of charging in respect of all three matters would have totalled in the region of £10,000 to £12,000.
13. The other improper transfers represented costs transferred on various other matters on account of final costs where bills had not been submitted to the clients at the time of the transfers. The amounts would have been incorporated in the final accounts submitted at the conclusion of the matters. In all of those cases the costs were justifiable and represented reasonable costs incurred in respect of the work done. There was no element of overcharging although the respondent accepted that bills should have been rendered to the clients at the time of the transfers.
14. A Legal Aid payment had been improperly retained in client account. This related to a medical fee disbursement that had been part of a regular normal BACS Legal Aid payment being made direct into the firm's office bank account. Initially it was overlooked and subsequently not paid out or transferred into client account which the respondent accepted should not have happened. At the time there were insufficient funds in the office account to make the appropriate outgoing payment.
15. The respondent acknowledged that his acceptance of the allegations revealed conduct unbecoming a solicitor and he deeply regretted that he had failed to maintain the high professional standards expected of a member of the solicitors' profession. The

respondent apologised to his colleagues in the profession. The respondent said in a statement placed before the Tribunal that he had always achieved a high level of ethical standards and quality of service to clients. He was well respected both in the profession locally and in the local community in which he lived and had always been very active.

16. High street practitioners had been under increasing pressure in the years before the hearing. They had to cope with increasing overheads, increasing client demands and professional and administrative requirements all of which contributed towards reducing profit margins. The respondent had worked longer and longer hours and had to concentrate on fee earning leaving less time to be spent on business and financial management.
17. The respondent's conduct had been out of character. He believed that he could attribute such conduct to the pressures to which he had been subjected. He had found it difficult to apply the element of business ruthlessness which he believed had become necessary to run a successful practice. The respondent had always believed that spending time with clients and concentrating on giving them the best possible personal service should be the main priority for a solicitor, particularly in a local high street practice such as his own.
18. The respondent had lost his practice which had been taken over by another local firm without payment of any consideration. The respondent had been adjudicated bankrupt and neither the respondent nor his wife, who previously worked for him, had secured any full-time employment. The respondent believed that his home would be repossessed. He was without any capital and without income.

The Findings of the Tribunal

The Tribunal found all of the allegations to have been substantiated.

On the 27th September 1988 the Tribunal found the following allegations to have been substantiated namely that the respondent had failed:

- (i) to deliver in good time an Accountant's Report to the Law Society for the year ending 31st May 1985 in compliance with Section 34(1) and (2) of the Solicitors Act 1974;
- (ii) to deliver in good time an Accountant's Report to the Law Society for the year ending 31st May 1986 in compliance with Section 34(1) and (2) of the Solicitors Act 1974;
- (iii) to comply with a direction of the Adjudication Committee of the Solicitors Complaints Bureau contained in its resolution of 13th May 1987;
- (iv) to comply with a condition imposed on his Practising Certificate in that he failed to deliver to the Law Society an Accountant's Report for the period ending on 31st May 1987;
- (v) to comply with a condition imposed upon his Practising Certificate in that he failed to deliver to the Law Society an Accountant's Report for the period ending on 30th November 1987

And that the respondent had been guilty of conduct unbefitting a solicitor.

On that occasion the Tribunal recognised that the circumstances of the case were unusual. The fault for the delay was not entirely that of the respondent. The Investigation Accountant had found nothing wrong with the respondent's bookkeeping and clients' money appeared to have been handled in accordance with the Rules. The respondent had given a frank explanation and his house was in order. The respondent had been put to considerable expense and in the particular circumstances of the case they ordered that the respondent be reprimanded and pay the costs of and incidental to the application and enquiry.

In July of 1997 the Tribunal were not without sympathy for the respondent. Of course they recognised the tremendous pressures placed upon a sole practitioner running a "high street" practice. His personal fortunes were at a very low ebb. The Tribunal gave the respondent credit for his clear and unequivocal admissions of the allegations and the facts.

Nevertheless the Tribunal could not ignore the fact that Counsel had not been paid substantial fees and large sums of money to which the respondent was not entitled had been transferred from his client to his office account, and the respondent, although such transfers had not been carried out deliberately, had derived considerable advantage from these monies although it was accepted that that was not his initial intention.

In the circumstances the Tribunal considered it right that the respondent should be Struck Off the Roll of Solicitors and further that he should pay the costs of and incidental to the application and enquiry including the costs of the Investigation Account of the Solicitors Complaints Bureau.

DATED this 19th day of August 1997

on behalf of the Tribunal

A. 

D E Fordham
Chairman

*Findings filed with the
Law Society on the 22nd
day of August 1997.*