

IN THE MATTER OF PAUL ANTHONY BROWN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J R C Clitheroe (in the Chair)
Mr. D W Faull
Lady Bonham Carter

Date Of Hearing: 14th October 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 Andrew Christopher Graham Hopper, solicitor of P O Box 7 Pontyclun, Mid-Glamorgan on the 7th April 1997 that Paul Anthony Brown of Paul Brown & Co. of 799a London Road, Westcliffe on Sea, Essex solicitor 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:-

- (1) been guilty of conduct unbefitting a solicitor in that he had misled clients as to the progress of matters under his control;
- (2) been guilty of conduct unbefitting a solicitor in that he attempted to mislead his employers as to his conduct of clients' affairs.

The application was heard at the Court Room No. 60 Carey Street, London WC2 on the 14th October 1997 when Andrew Christopher Graham Hopper solicitor of P O Box 7 Pontyclun,

Mid Glamorgan CF7 9XM appeared for the applicant and the respondent was represented by Mr Mark Jerman of Billericay Essex.

The evidence before the Tribunal included the admissions of the respondent and Exhibit "PAB1" (a medical report) and "PAB2", (two references faxed to the Tribunals office during the course of the hearing).

At the conclusion of the hearing the Tribunal ORDERED that the respondent Paul Anthony Brown of Paul Brown & Co. 799a London Road, Westcliffe on Sea, Essex 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 fixed in the sum of £3,231.25p inclusive.

After pronouncing its order the Tribunal agreed that the filing of the order with the Law Society might be suspended for the period of twenty eight days to ensure that the respondent might close down his sole practice in an orderly fashion and arrange for his clients to be represented by other solicitors with a minimum of inconvenience to those clients.

The facts are set out in paragraphs 1 to 12 hereunder:-

1. The respondent born in 1958, was admitted a solicitor in 1988.
2. At the material times the respondent was employed as an assistant solicitor successively by the firms of Drysdales & Janes and Barnes & Taylor of Southend on Sea.
3. The respondent acted, in his capacity as assistant solicitor at Drysdales & Janes, for Mr V in respect of a variety of matters but principally in his proposed claim in professional negligence against the firm of his former solicitors. Mr V complained to the Solicitors Complaints Bureau (the Bureau), and his Member of Parliament, that he had been misled by the respondent.
4. As a result of those matters coming to the attention of the partners in Drysdales & Janes the respondent was interviewed and made a lengthy statement in which he made admissions. A copy of the statement was before the Tribunal. The thrust of the statement was an acceptance by the respondent that he wrongly informed Mr V that the Solicitors Indemnity Fund Ltd (SIF) (the former solicitors' insurers) had agreed to make an interim payment of £3,000 and that, upon establishing that SIF were not going to make any such payment, he paid Mr V £3,000 from his own resources.
5. The respondent prepared for Mr V and Mr V swore an affidavit purportedly in support of an application for summary judgement. The document was sworn on the 16th June 1994 and referred to "the delivery of a defence or purported defence". The relevant proceedings were not commenced until December 1994, six months after the affidavit was sworn.
6. The respondent also admitted not informing a partner of the firm, Mr Gerald Lynch, of these matters, commenting only that matters were proceeding normally with the result that Mr Lynch gave information to the client's Member of Parliament which was incomplete.

7. When challenged directly by partners of Drysdales & Janes as to the circumstances of the payments to Mr V, the respondent initially absolutely denied any such arrangement. He maintained that denial, twice during an interview with a solicitor appointed by the Bureau to investigate the complaint on or about the 5th August 1994 and again in the presence of three partners of Drysdales & Janes on the 17th August 1994. During a third interview on the 19th August the respondent admitted the true circumstances and said that he had denied those circumstances earlier because he had "not wanted to lose face".
8. In the course of the Bureau's subsequent investigation the respondent provided explanations in writing, copies of which were before the Tribunal. In relation to Mr V the respondent denied that he misled his client; he did not deal with the allegation that he misled his employers. The respondent also denied misleading a second client, Mr P whose complaint is referred to in paragraphs 9 and 10 hereunder.
9. The respondent acted for Mr P in relation to a claim for personal injury
10. The respondent informed Mr P that the proposed defendants were prepared to make an interim payment and that he would be receiving £15,000, later adjusted to £8,000. The respondent wrote to his client confirming the availability of an interim payment. The defendants confirmed that no approach had ever been made for such a payment.
11. The respondent had conduct of a matter for Mrs C. He gave progress reports to Mrs C to the effect that judgement as to liability had been obtained (amongst other things) and that an interim payment had been negotiated, when no proceedings had been commenced.
12. The respondent had told Mrs C on two separate occasions that Court hearings had been listed but subsequently that each had been cancelled. On two further occasions the respondent telephoned his client to say that he had arranged conferences with Counsel. Subsequently he had telephoned to say that they had been cancelled. On the first occasion he indicated the barrister had been delayed in court and on the second occasion the barristers' wife was having a baby. Neither was true.

The submissions of the applicant

13. The respondent had admitted the allegations and largely had admitted the detailed facts placed before the Tribunal save for some reservations. Nevertheless it was clear that the respondent had misled three sets of clients and had misled two firms of solicitors who had employed him as an assistant solicitor. The first firm, Messrs. Drysdales & Janes, and the second firm, Messrs. Barnes & Taylor who had employed the respondent after Messrs. Drysdales & Janes. The file of Mrs C had been taken by the respondent without the authority of Messrs. Drysdales & Janes with him to Messrs. Barnes & Taylor.
14. The respondent accepted that he received proper support and assistance from his employers and although he was under pressure of work from time to time, that pressure did not amount to an intolerable burden.

15. The applicant accepted that Mr V was a difficult client. The applicant accepted that the respondent had not achieved any personal material gain in misleading clients, but he had gained "breathing space" and had reduced the level of possibly persistent enquiry of him by the client.
16. It was a serious matter for the respondent to have misled his employer who in turn in good faith conveyed erroneous information to the client's member of parliament.
17. It was also a serious matter for a solicitor to prepare a document to which his client attested in completely false circumstances.
18. The respondent had perpetuated his wrong doing by denying it when interviewed by his employers.
19. The misleading of Mr P as to his expectation of damages and in particular an interim payment, was particularly unfortunate as Mr P had been under financial pressure and he had passed on his expectation of being put in funds to his creditors who must as a result have been given a completely erroneous impression of Mr P's bona fides.
20. The matter of Mrs C had been conducted by the respondent whilst he was an assistant solicitor with Messrs Drysdales & Janes and he had taken that file with him to his then new employers Messrs Barnes & Taylor apparently without any reference to or consent from the former employers. It was suggested that the respondent had a very good reason for taking the file with him. Mrs C had conducted an action instructing other solicitors. She had lost but had apparently taken the view that she had not lost on the merits of the case but because she was not well represented. Her Legal Aid Certificate in connection with the initial matter had come to an end. If she was to appeal then a fresh application for Legal Aid was necessary: in any case she was out of time for appeal. The Legal Aid Board itself had indicated that it had considered the pursuit of the matter to be unmeritorious. The respondent had indicated to Mrs C that there had been a trial in her absence on liability in which they had been successful. They were told that damages of over £1,000 were to be awarded and further medical evidence would be required. She was also told that an interim payment would not be a problem and that £3,500 could be obtained. That was extremely significant for Mr & Mrs C who were in financial difficulties. The indicated interim payment would have enabled them to clear their rent arrears. Upon the advice of the respondent they remained in their rented property with a view to buying the same with the damages which they expected. In fact a possession order was obtained by the landlord and enforced. The respondent told Mr & Mrs C they should leave their furniture in the property indicating that all would be well. The consequences to Mr & Mrs C were apparent.
21. The Mrs C matter had come to light whilst the respondent was on holiday. His employers had not been able to find the file as the respondent kept it at home.
22. The senior partner of Messrs. Barnes Taylor recited the circumstances to the respondent who did not protest and resigned from the firm.

23. After leaving Messrs Barnes Taylor the respondent set up in practice on his own account and was a sole practitioner at the time of the hearing.
24. The Tribunal would be told on behalf of the respondent that he suffered from diabetes which was not, at the time the offences were committed, under control. The applicant queried the strength of the medical evidence placed before the Tribunal.
25. The Tribunal was invited to take the view that it was particularly disturbing to discover that the respondent not only had misled clients and the partners of Messrs. Drysdales & Janes, but he had entered into a second phase of misleading when gaining employment with Messrs. Barnes Taylor.

The submissions of the respondent

26. The respondent largely accepted the allegations.
27. The respondent accepted that he had persuaded himself that damages would be forthcoming for Mr. V and had felt compelled to mislead Mr. V and had then paid money from his own pocket to make up what he had indicated was an interim payment. He had paid the money in a number of smaller amounts, some by cash and some by his own personal cheque. It was strange that the client had not queried that.
28. Mr. V had been an extraordinarily difficult client who subjected the respondent to a great deal of pressure. After matters came to light he had pursued the respondent and his wife to such an extent that they had been compelled to take court action against him.
29. The respondent accepted the position set out by the applicant in respect of his former client, Mr. P.
30. With regard to the matter of Mrs. C, those allegations were accepted, but the matters about which complaint arose had occurred when the respondent was at his lowest ebb.
31. The respondent did not wish to criticise the supervision or support given to him by the two firms of solicitors by whom he had been employed. However the Tribunal was invited to bear in mind that a new assistant solicitor in a firm invariably had passed to him difficult or problem files which had been left by other fee earners.
32. The Tribunal was invited to take note that the respondent suffered from an untreated and uncontrolled diabetic condition. The respondent believed he had suffered from severe hypoglycaemia and that had affected his ability to concentrate, had affected his memory and his personal relationships with all people, including his work colleagues and his own social partner, who subsequently had become his wife.
33. The Tribunal was told of domestic difficulties and considerable stresses of a personal nature to which the respondent and his wife were subjected at this time. Full details were before the Tribunal but they do not set them out here.

34. The respondent had set up in practice on his own together with a legal executive and a secretary. His sole practice had proved relatively successful and the respondent was building up a client base and a workload to a satisfactory degree.
35. The respondent had taken himself in hand with regard to his diabetic condition, had been properly advised and had been provided with testing machinery which was convenient to use.
36. The Tribunal was invited to consider the testimonials placed before them which supported the respondent.
37. The Law Society's Investigation Accountant had inspected the respondent's books of account (in his sole practice) which had been found to be in good order.
38. The Law Society had permitted the respondent to practise on his own account and had issued him with an unconditional Practising Certificate. The Tribunal was invited to allow the respondent to continue in practice in which he had already achieved a degree of success and to reflect the displeasure of the solicitors' profession by imposing a financial penalty. As a sole practitioner any Order depriving the respondent of his ability to practise would represent a most draconian measure.

The Findings of the Tribunal

The Tribunal FOUND the allegations to have been substantiated.

To be a solicitor is to be a member of an honourable profession. To continue to be a member of that profession a solicitor must demonstrate that he maintains the high standards of probity, integrity and trustworthiness which the profession demands. Dishonesty on the part of a solicitor cannot be overlooked. The respondent misled clients on three separate occasions. The extent of his misleading was considerable and in one case encompassed the preparation of an affidavit to which his client attested which was based on totally false premises. The respondent misled his employers, one of whom as a result found himself to have given misleading information to a client's member of Parliament in response to an enquiry. Even bearing in mind the pressure under which the respondent placed himself to perform well, the not inconsiderable problems which he suffered with his health and the personal and domestic difficulties which he and his wife had encountered and for which the Tribunal had enormous sympathy, the Tribunal could not find any circumstances that would serve to mitigate the respondent's actions to such an extent that they could consider the imposition of any penalty other than the ultimate sanction. The Tribunal were of the clear view that a Striking Off Order was right in all of the circumstances. The Tribunal very much regretted the unfortunate consequences of the respondent's behaviour which fell upon the clients whom he misled. It would be hard to find any other matter that could more seriously damage the good reputation of the solicitors' profession.

The Tribunal ordered that the respondent be struck off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry in a fixed sum. For the reasons set out above the Tribunal, the Tribunal agreed that the filing of the Order with the Law Society might be suspended for a period of twenty-eight days.

DATED this 17th day of November 1997

on behalf of the Tribunal



J.R.C. Clitheroe
Chairman

Findings filed with the
Law Society on the 25th
day of November 1997