

IN THE MATTER OF JOHN BELL IRVING, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mrs E Stanley
Mr D Gilbertson

Date of Hearing: 15th January 2002

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 ("OSS") on 11th June 2001 that John Bell Irving of Hanby, Grantham, Lincolnshire, 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 against the Respondent were that he had been guilty of conduct unbecoming a solicitor in that he:-

- (i) failed to keep his accounting records properly written up contrary to Rule 32 of the Solicitors Accounts Rules 1998;
- (ii) (Withdrawn with the consent of the Tribunal)
- (iii) Utilised clients' funds for his own benefit or alternatively for the benefit of other persons not entitled to the funds.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 15th January 2001 when George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN appeared as the

Applicant and the Respondent was represented by Arnold Rosen solicitor of Arnold Rosen & Co, 199 Piccadilly, London, W1V 9LE.

The evidence before the Tribunal included the admissions of the Respondent together with a defaulter list in respect of the Respondent handed in at the hearing by the Applicant at the request of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the respondent John Bell Irving of Hanby, Grantham, Lincolnshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on 15th January 2002 and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £5,000.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent born in 1948 was admitted as a solicitor in 1977 and his name remained on the Roll of Solicitors.
2. The Respondent carried on practice on his own account under the name John Bell Irving & Co from Lindpet House, Market Place, Grantham, Lincolnshire, NG31 6LJ.
3. Following authorisation an Investigation and Compliance Officer, appointed by the OSS commenced an inspection of the Respondent's books of account on 9th October 2000. Following the inspection a report was prepared dated 16th October 2000.
4. During the course of the inspection the Respondent was unable to produce proper books of account. The only accounting records available were incomplete records of office account transactions using computer software not designed to comply with the Solicitors Accounts Rules. The Respondent was unable to produce any client ledger print outs or any bank reconciliations.
5. Because of the above, the Officer was unable to compute the Respondent's total liabilities to clients as at the 31st August 2000. However he did compute that there was a minimum liability for four clients as at the 31st August 2000 totalling £11,759.
6. As at the 31st August, there was no clients' money available to satisfy this demand because the client bank account was overdrawn by the sum of £3,021.27.
7. The Respondent stated that he would work "night and day" to find out how the shortage had occurred and stated that he could notify the OSS of the result of his searches by the 20th October 2000. The Respondent's only explanation for the minimum cash shortage then was that it was caused by arithmetical error possibly resulting in an incorrect payment.
8. As a result of the Report, the OSS wrote to the Respondent by letter dated 23rd October 2000 seeking an explanation and enclosing a copy of the Report.
9. By letter dated 30th October 2000 the Respondent among other things confirmed that there was a shortage in client account and requested a further ten days to finish his enquiries. The Respondent appended to his letter four completion statements relating to the four matters set out in the Investigation and Compliance Officer's report to

establish the minimum cash shortage, together with bank statements and various paying in slips.

10. As the result of the response from the Respondent, Professional Casework Sub-Committee A met on 8th November 2000 and resolved among other things to refer the conduct of the Respondent to the Tribunal.
11. A copy of the Report of the Investigation and Compliance Officer together with copies of all other relevant documentation were before the Tribunal.

The Submission of the Applicant

12. The Applicant did not allege dishonesty against the Respondent, rather this was a case of muddle.
13. As at the 9th January 2002 a shortage of £17,000 remained on client account.

The Submissions of the Respondent

14. When Sub Committee A had met on the 8th November 2000 it had authorised an intervention into the Respondent's practice. The Respondent's representative had observed in his conversations with the Respondent that the latter had a complete absence of judgement which the representative supposed to be caused by pain killing drugs.
15. At the age of 34 the Respondent had been a rugby player of at least county standard. He had sustained damage to his ankle which caused him trouble for the next 14 years.
16. His practice broke up, he was registered disabled and took very powerful medication. In April 1988 his lower left leg had been amputated.
17. The Respondent had then appeared for the first time in many years to be overcoming the greatest barrier he had to work namely pain.
18. By July of that year the Respondent was able to walk with the benefit of an artificial limb. While walking his dog, another dog had attacked causing the Respondent to fall causing damage to his right knee. This had led to further hospitalisation and the Respondent's knee was not yet recuperated.
19. In December 1998 the Respondent had fallen at home and broken his collar bone.
20. The Respondent had gone back into practice in late 1999/early 2000. He had practised for ten or eleven months before The Law Society had intervened.
21. His home had been repossessed and he lived in rented accommodation. He was supported by his disablement pension and by his wife.
22. When the Respondent's representative had read the papers it was obvious to him that the Respondent lacked judgement and was unable to answer the questions sensibly.

As late as the day before the hearing the Respondent had wanted to dispute minor points.

23. This was a distressing case. To meet the Respondent was to recognise that this was a man who could not give cogent advice to the public. It was not surprising that the Respondent had started with the wrong software.
24. To fine the Respondent would make a bad situation worse. The Respondent had not been able to afford to attend before the Tribunal today. His representative appeared pro bono.
25. It was submitted that this was a case for suspension not striking off. Dishonesty had not entered the Respondent's head but a great deal of his conduct was disoriented.
26. The Respondent did not intend to come back into the profession. His future was bleak and his only bright prospect was his family.
27. This was a case of a hopeless muddle by a man "brim full" of pain killing drugs.

Submissions as to costs

28. The Tribunal heard detailed submissions in relation to the costs of the application and enquiry.
29. The Applicant had submitted a schedule of costs in a total of £6,000 which included almost £3,000 for the Investigation & Compliance Officer.
30. It was submitted on behalf of the Respondent that the costs should be made subject to a detailed assessment.
31. The Applicant sought a fixed order or, if the Tribunal was minded to order that the costs be assessed, the Applicant would request an order for a substantial interim payment with the balance to be assessed.

The Findings of the Tribunal

The Tribunal found the allegations to have been substantiated indeed they were not contested.

This was a sad case in which the mind of the Respondent had been disabled by powerful pain killing drugs. Nevertheless the Respondent had been unable to explain the shortage on his client account. His accounts had been in a muddle and while no dishonesty had been alleged against or found in respect of the Respondent the Tribunal had a duty to protect the public by preventing the Respondent from practising. The Tribunal would adopt the suggestion of the Respondent's representative and order an indefinite suspension.

The Tribunal would make a fixed order for costs in the sum of £5,000 against the Respondent. The enforcement of those costs was a matter for The Law Society but the Tribunal would draw to the attention of The Law Society the impecunious

circumstances of the Respondent as with others in a like state who appeared before the Tribunal.

The Tribunal therefore ordered that the Respondent John Bell Irving of Hanby, Grantham, Lincolnshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 15th January 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £5,000.

DATED this 12th day of April 2002

on behalf of the Tribunal

R B Bamford
Chairman