

IN THE MATTER OF JANET FRANCIS, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the chair)

Mr. R J C Potter

Mr. M C Baughan

Date of Hearing: 13th December 2001

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by David Elwyn Barton solicitor of 72 King Street, Maidstone, Kent, ME14 1BL on 11th July 2001 that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Janet Francis of Horsham, West Sussex, a person who was or had been a clerk to a solicitor, or that such other order might be made as the Tribunal should think right.

The allegation against the respondent was that she, having been a clerk to a solicitor but not being a solicitor, had occasioned or been party to, with or without the connivance of the solicitor to whom she had been a clerk, an act or default in relation to that solicitor's practice which involved conduct on her part of such a nature that in the opinion of The Law Society it would be undesirable for her to be employed by a solicitor in connection with his/her practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 13th December 2001 when David Elwyn Barton solicitor and partner in the firm of Whitehead Monkton of 72 King Street, Maidstone, Kent, ME14 1BL appeared

as the applicant and the respondent was represented by Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke, Potter & Chapman of 2 Putney Hill, Putney, London, SW15 6AB.

The evidence before the Tribunal included the admissions of the respondent together with three letters of reference in support of the respondent.

At the conclusion of the hearing the Tribunal ordered that as from 13th December 2001 no solicitor should, except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Janet Francis of Horsham, West Sussex, a person who was or had been a clerk to a solicitor and the Tribunal further ordered that she do pay the costs of and incidental to the application and enquiry fixed in the sum of £1,057.50.

The facts are set out in paragraphs 1 to 5 hereunder: -

1. At all material times the respondent was employed by solicitors Rawlinson and Butler of Griffin House, 135 High Street, Crawley, West Sussex, RH10 1DQ. She was employed as a conveyancing clerk and had been so employed from 1986 until 1999 when she retired.
2. During 1990 and early 1991 the respondent acted for Mr and Mrs H in connection with their purchase of West Lodge, Beedingwood, Horsham. During the course of the transaction it was necessary for the respondent to give advice to them about the applicability and effect of certain restrictive covenants and in so doing she wrote to her clients on the 11th January 1991. A copy of the letter sent by the respondent which bore that date was before the Tribunal.
3. In 1994 for reasons connected with the advice given about the covenants, Mr and Mrs H consulted Morrisons solicitors about a possible professional negligence claim against Rawlinson and Butler. During the course of what subsequently became contested civil proceedings, the file relating to the conveyancing transaction was released to Morrisons and this contained the file copy of the letter of the 11th January 1991. The original had been sent to Mr and Mrs H on its date of posting and had been given by them to Morrisons when they were first instructed. It had thereafter become lost. When the copy was produced in the proceedings, it contained manuscript additions which materially altered its meaning. A copy of the copy letter bearing the additions to paragraph 3 was before the Tribunal. In its original form the said letter stated "...the contract will be conditional upon the consent to dealing being provided by the Regional Health Authority and that they release the whole of the land from the covenants..."
4. The altered letter was produced to the court when the case was heard. The respondent maintained that she made the alterations to the copy in manuscript immediately prior to posting and that she had similarly altered the original. After the trial, which was concluded in favour of Mr and Mrs H, Morrisons found the original letter. It had not been so altered.
5. By a letter dated 7th October 1999 to the Office for the Supervision of Solicitors the respondent admitted that she altered the file copy of the letter of 11th January 1991 not when she sent the letter to Mr and Mrs H but when the file was requested by

Morrison's for the purpose of advising on the claim. A copy of the letter of 7th October 1999 was before the Tribunal.

The Submissions of the Applicant

6. The respondent had admitted the allegations and had accepted that an order under Section 43 of the Solicitors Act 1974 should be made against her.
7. The application was focused on the letter of the 11th January 1991 and the fact that the respondent had altered the meaning of one of the critical sentences in the copy of the letter.

The Submissions of the Respondent

8. The respondent had accepted the allegation and the making of an order against her.
9. The respondent had worked in the profession for 25 years until she retired in 1999. She had worked for a number of respectable firms and was horrified and ashamed to be before the Tribunal.
10. The respondent had worked as a conveyancing executive for Messrs Rawlinson and Butler from about 1987. In 1990 she had been instructed in the matter of Mr and Mrs H.
11. This had been an extremely complex matter and the respondent had spoken to the purchaser almost daily and had dealt with all the issues including the restrictive covenants. The matter had all gone through.
12. In 1993 the respondent was asked to find the file and send it to another firm of solicitors as another transaction was due and the respondent's firm could not act because of a conflict of interest.
13. The respondent had looked at the file. She saw the letter of 11th January 1991 and thought that it did not reflect what she had written.
14. She had acted with the utmost professional stupidity and totally out of character. However she had thought that she was changing the letter to what it had originally said.
15. When the respondent had sent the file off she had not known that professional negligence proceedings were due to take place nor did she know that the original letter had been lost.
16. She did not amend the letter to deceive anyone. The proceedings were not within her knowledge and indeed may not have started.
17. There had been no deliberately dishonest action and no intention to mislead anyone or to mislead the court.

18. The respondent could not explain why she had dealt with the matter in such a way. In 1993 she had been looking after both her parents who were ill and living with her and was also working far too hard.
19. Two words in a 25 year long career had led the respondent to the Tribunal. She had suffered a great deal from the stigma.
20. The respondent had retired in 1999 and had no intention of working in the profession again.
21. The respondent apologised for any damage to the reputation of the profession and for being here.
22. The Tribunal was asked to consider the references put forward on behalf of the respondent. She had a previously blameless character and the Tribunal was asked to accept the matter on the basis on which it had been put by the respondent.

The Findings of the Tribunal

The Tribunal found the allegation to have been substantiated indeed it was not contested.

This was clearly a sad case where someone with a long and previously blameless career in the law had committed an act of utmost foolishness. It was right that the order sought be made. In such circumstances the making of the order was primarily a regulatory matter.

The Tribunal ordered that as from 13th December 2001 no solicitor should, except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Janet Francis of Horsham, West Sussex, a person who was or had been a clerk to a solicitor and the Tribunal further ordered that she do pay the agreed costs of the applicant fixed in the sum of £1,057.50.

DATED this 4th day of March 2002

on behalf of the Tribunal

J N Barnecutt
Chairman