

IN THE MATTER OF CHARLES CLUTTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H Isaacs (in the chair)
Mr. S N Jones
Mr. M C Baughan

Date of Hearing: 19th February 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") by Andrew Miller solicitor of the Supreme Court of Judicature employed by the Law Society at the OSS of Victoria Court, 8 Dormer Place Leamington Place, Warwickshire on 21st August 2001 that Charles Clutton solicitor of Steggles, Solicitors, 6 St John Street, Chester, CH1 1DA might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant invited the Tribunal to consent to an amendment to the allegation. The Respondent agreed. The Tribunal gave its consent and the allegation set out below is in the agreed amended form.

The allegation was that the Respondent had been guilty of conduct unbecoming a solicitor in that he had been convicted of criminal offences.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19th February 2002 when Andrew Miller solicitor employed by the Law Society at the OSS appeared as the Applicant and the Respondent was represented by Stuart Denny of Counsel instructed by Messrs Leslie Harris Solicitors of Blackpool.

The evidence before the Tribunal included the admission of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Charles Clutton of 6 St John Street, Chester, CH1 1DA 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 £577.33p.

The Filing of the Tribunal's order was suspended until seven days after the filing of the Tribunal's written findings.

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

1. The Respondent, born in 1961, was admitted as a solicitor in 1987. At the material times he practised in partnership under the style of Steggles, Solicitors of 6 St John Street, Chester, CH1 1DA.
2. On 23rd February 2001 at Knutsford Crown Court, Chester, the Respondent was convicted of six offences under the Environmental Protection Act, and was fined a total of £9,000.
3. Details of the offences were that the Respondent had been found guilty of three counts of "carrying out prescribed process other than in accordance with condition to which it was subject", one count of "making a false statement contrary to Section 23(1)(h)" and two counts of "furnishing false information". The total fine £9,000 was apportioned in the following way, £1,500 on each of the first three counts, £1,500 in respect of the second count and £1,500 in respect of the remaining two counts. All the fines were imposed on the basis that they were to be paid within six months with forty five days imprisonment in default.
4. The facts underlying those convictions related to the introduction by the government in April 1996, in response to the BSE crisis of the 'Over Thirty Months scheme' by which cattle over the age of thirty months were prevented from entering the food chain by being slaughtered in a highly regulated fashion and their carcasses were to be disposed of safely.
5. The Respondent, together with his brother, Thomas Samuel Clutton, was a director and manager of a company named "Clutton Agricultural". That company operated three incinerators at Wrexham, dealing with the disposal of cattle carcasses under the 'Over Thirty Months scheme'.
6. The local authority had imposed a limit on the number of carcasses of which Clutton Agricultural was permitted to dispose. The capacity of the incinerators was somewhat greater. Clutton Agricultural had been requested by farmers to deal with the disposal of more carcasses than was permitted by the local authority.
7. Clutton Agricultural had in fact disposed of more carcasses than the number permitted by the local authority. Accurate returns of the number of carcasses disposed of had been made to the Intervention Board, and proper payments had been made to the farmers concerned and Clutton Agricultural. However, returns made to the local authority had not contained the accurate number of carcasses disposed of but had contained figures indicating that the number of carcasses disposed of had been within the limits fixed by the local authority.

8. In practice the Respondent's brother had been almost entirely responsible for running Clutton Agricultural and the business involving the incinerators. The returns had to be signed by a director or a manager of the company and the Respondent had been called upon to undertake this task on three occasions. The offences for which the Respondent had been convicted related to his signing the returns to the local authority which contained inaccurate figures.

The Submissions of the Applicant

9. The acts underlying the criminal offences of which the Respondent had been convicted were acts of dishonesty on the part of the Respondent. It was accepted by the Applicant however that some of the offences had a strict liability element.
10. The attention of the Tribunal was drawn to the sentencing remarks of Mr Recorder Woodward in the Crown Court at Chester in which he made it plain that the Respondent's actions had been dishonest, noting in particular when he said, "What you did in simple terms, in my view, was to exceed the number of incinerations that you were permitted so as to enable you to make extra profit. You concealed what you were doing by providing the true numbers of incineration to the [*Intervention*] Board, but supplied false figures which were within the permitted limits to the Council."

The Submissions of the Respondent

11. The Respondent admitted the allegation.
12. The Respondent had only a minor involvement in the business of Clutton Agricultural which was largely run and managed by his brother. The Respondent's brother had been a co-defendant in the criminal proceedings and his brother's greater part had been recognised by Mr Recorder Woodward.
13. At the material time Clutton Agricultural had been put under much pressure to dispose of more carcasses than the local authority condition permitted. There had not been sufficient capacity elsewhere to meet the demand.
14. Clutton Agricultural had appealed against the limit imposed by the Council. The Welsh Office had required an oral hearing and in due course a decision in favour of Clutton Agricultural was reached in March 1999. It had been in the public interest that the business be permitted to use the extra capacity of its incinerators.
15. It was understood that the local authority had plans to open an incinerator of its own and it was considered that this was a factor in its obstructing Clutton Agricultural from running its incinerators at full capacity.
16. The figures submitted to the Intervention Board were absolutely accurate. The company had never been paid for work which it had not done.
17. The figures submitted to the local authority were lower than the true numbers of carcasses burned. That was done in order to demonstrate purported compliance with the conditions imposed by that local authority.
18. The Respondent had been involved in signing those documents on three days only. He had been involved because his brother had been unavailable. He had attended at

the Wrexham site (some twenty miles from his office) and had signed the documents. It would be right to describe the Respondent's involvement in the agricultural company as peripheral. The Respondent had been placed in a difficult position where he wished to co-operate with his brother – it had been very difficult to say “no” to a member of his immediate family.

19. There had been no damage to the environment. There had been no evidence of pollution. The fact was that the animals were dead and their carcasses had to be burnt.
20. At the time when the Respondent signed the documents he was not acting as a solicitor. No one acted in reliance upon the fact that he had signed the documents in that capacity. He signed only in his capacity as a director of Clutton Agricultural Limited. The Tribunal was invited to take the view that some of the sentencing remarks of the Recorder in the Chester Crown Court had exaggerated the nature of the offences and their effect.
21. The Respondent had already paid a heavy price in terms of anxiety, the fine imposed upon him and the order that he pay substantial costs. The Respondent had paid all of those. The Respondent's own costs exceeded the figure paid in fines and costs ordered to be paid by the Court.
22. The conviction of the Respondent had not attracted a great deal of publicity. The convictions had in fact had less impact upon the public than might have been expected.
23. The Respondent was forty years of age and had been qualified as a solicitor for fifteen years. He had found himself a sole practitioner after his senior partner had departed somewhat unexpectedly owing to personal difficulties. The Respondent's firm was a general practice undertaking no criminal work, and it maintained a good reputation.
24. The Respondent had not previously appeared before his professional disciplinary Tribunal, there had been no claim against his indemnity insurance and hitherto he had enjoyed an unblemished professional history.
25. The Respondent was a married man having the usual outgoings.
26. The Tribunal was invited to take the view that this was a sufficiently unusual case to enable it to exercise its discretion not to impose any sanction that would deprive the Respondent from his ability to practise.

The Findings of the Tribunal

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

The Tribunal considered this matter with much anxiety and found it not easy to come to a decision. The Tribunal would not, as the Respondent recognised, go behind the decision of the Recorder in Chester Crown Court. The Tribunal have taken the Respondent's submissions into account and in particular have noted that the acts complained of on the part of the Respondent had taken place on three days only and that the Respondent had found it difficult to refuse to sign returns containing untrue

figures as the incineration business was run almost exclusively by his brother and it was difficult to say “no” to a relative.

The Tribunal recognises that the Respondent has paid his debt to society.

The Tribunal concludes that what had happened had been serious and the fact that the Respondent as a solicitor had been prepared to and indeed did sign documents which he knew contained inaccurate figures did affect the reputation of the solicitors’ profession and fell below the required standards of probity, integrity and trustworthiness.

The Tribunal was concerned that the imposition of a sanction upon the Respondent meant that the penalty he suffered for playing a small part in the deception of the local authority was very much greater than the penalty imposed upon his brother who bore the lion’s share of the responsibility for the deception.

It has been said that being a solicitor brings many benefits but it has also to be recognised that that status also brings burdens. One such being that a solicitor must at all times, whether in a professional or private life, act with honesty and probity.

The Tribunal was concerned that the imposition of the ultimate sanction might be disproportionate to the nature of the Respondent’s offence. The Tribunal however concluded that the maintenance of the good reputation of the solicitors’ profession is so important that a solicitor who knowingly appends his signature to a false return on three occasions must not be permitted to remain a solicitor. The Respondent knew what he was doing and he did it on more than one occasion.

The Tribunal recognises that the Respondent is not a danger to the public. The Tribunal also recognise the difficulty in which he would be placed by the immediate imposition of a striking off order. In order that the Respondent might make orderly arrangements in connection with his clients’ affairs and thus cause his clients a minimum of inconvenience, the Tribunal agreed that the filing of its order might be suspended until seven days after the filing of the Tribunal’s written Findings. Should the Respondent appeal the Tribunal’s decision then it would, of course, be open to the Respondent to seek a further stay of the Tribunal’s Order from the Queens Bench Division of the High Court.

The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and further ordered that he pay the Applicant’s costs in an agreed fixed sum.

DATED this 7th day of May 2002

on behalf of the Tribunal

A H Isaacs
Chairman