

IN THE MATTER OF JOHN EDWARD RAYNER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr L N Gilford
Lady Maxwell-Hyslop

Date of Hearing: 30th May 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 George Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 5th December 2001 that John Edward Rayner of Scarborough, North Yorkshire, 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:-

1. Dishonestly misled a client with regard to the terms of settlement achieved for that client;
2. Misled the Office with regard to the terms of his letter dated 22nd June 2001.
3. Failed to represent his client with competence or diligence.
4. Failed to deal promptly with communications relating to the matter of a client or former client;
5. Unreasonably delayed in delivering up papers and documents to a client when properly called upon to do so;
6. Failed to operate a complaints handling system contrary to Rule 15 of the Rules;

7. Failed to respond or to deal promptly and substantively with correspondence from the OSS.
8. Contrary to Rule 1 of the Solicitors Practice Rules 1990 (the Rules) his professional conduct was such that it compromised or impaired his integrity; his duty to act in the best interests of his client; his good repute or that of his profession and his proper standard of work.
9. Failed to deliver to The Law Society an Accountant's Report for the year ended 5.4.00 within six months in accordance with Rule 35 of the Rules.

By a supplementary statement of George Marriott dated 29th January 2002 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in that:-

10. He failed to honour an undertaking given in February 1999;
11. He failed to deal promptly and substantively with correspondence from the OSS;
12. He failed to deal promptly or at all with communications relating to a client or former client.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 30th May 2002 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 appeared in person.

The evidence before the Tribunal included the admissions of the Respondent save that in relation to allegation (ii) the Respondent said that the misleading was unintentional. A medical statement in respect of the Respondent's former client DM was submitted by the Respondent during the hearing.

At the conclusion of the hearing the Tribunal ordered that the Respondent John John Edward Rayner of Scarborough, North Yorkshire, be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £3,738.

The facts are set out in paragraphs 1 to 22 hereunder: -

1. The Respondent now aged 52 was admitted as a solicitor in 1975 and his name remained on the Roll of Solicitors.
2. At the material time the Respondent carried on practice as a sole principal under the style of John E Rayner at Albemarle Crescent, Scarborough, North Yorkshire.
3. In 1992 the Respondent acted for DM in connection with an alleged offence of burglary. DM was remanded in custody to a prison and during that time alleged that he was assaulted and bullied by inmates.
4. In 1993 the Respondent was formally instructed by DM to act on his behalf in a claim against the prison authority. Proceedings were issued in May 1994.
5. In 1997 the Respondent advised DM that his case could be settled for £10,000 and he accounted to DM for that sum.

6. Thereafter DM requested his file of papers from the Respondent but despite several requests the Respondent failed to forward them to him. Accordingly DM sought the assistance of his local Citizens Advice Bureau who by an authority from DM and letters dated 21st May 1998 and 4th June 1998 requested the file of papers.
7. As no response was received the CAB complained to the OSS by letter dated 14th July 1998. The OSS's initial response was to request that a Complaints Resolution Form be completed and sent to the Complaints Handling Partner which was done by the CAB on 21st September 1998. Nothing was heard from the Respondent and accordingly CAB on behalf of DM complained once more to the OSS by letter dated 10th November 1998.
8. On 22nd January 2001 the OSS formally raised this matter with the Respondent by their letter. No response was received. During the course of a subsequent telephone conversation initiated by the OSS the Respondent said that he needed to take advice and eventually a letter was received by the OSS from the Respondent dated 5th March 2001. In terms the Respondent asserted:-
 - (i) that he produced DM's file to the CAB on 3rd January 2001;
 - (ii) that until mid 1995 DM's file was progressed properly;
 - (iii) that during a period of a dispute with his previous partner he did not progress it properly;
 - (iv) that in 1997 he told DM that his case could be settled for £10,000;
 - (v) that he paid that sum from his own funds and did not advise DM of that fact.
9. In paying DM, the Respondent stated in terms that that was a figure "within but towards the lower end of the parameters suggested by Counsel."
10. The file which was released to the CAB was forwarded to the OSS by the CAB. The file showed no evidence of any activity on DM's matter since August 1995.
11. Accordingly by letter dated 11th June 2001 the OSS formally requested that the Respondent deal with the further issues and he did so by letter dated 22nd June 2001.
12. In terms the Respondent through the letter:-
 - (i) accepted that he failed to give proper attention to files which resulted in negligence claims;
 - (ii) that the reason for this was because of a deterioration in his family circumstances;
 - (iii) that he decided to pay DM £10,000 out of his own funds;
 - (iv) that he failed to advise DM that his case had not been proceeded with properly and therefore he should have sought independent advice;
 - (v) that he had not pursued any claim for costs against the Legal Aid Fund; whereas his ledger sheet and the Legal Services Commission contradicted that;
 - (vi) that he made a clean breast of the matter;
 - (vii) that he had ceased to practise with effect from April 2001;
 - (viii) that he wished to practise at some stage in the future;
13. On 4th September 2001 at a Professional Regulation session the Adjudication Panel resolved to refer the conduct of the Respondent to the Solicitors' Disciplinary Tribunal.

14. The Respondent's Accountant's Report for the following period was received late:-

<u>Period ended</u>	<u>Due date</u>	<u>Actual date</u>	<u>Months late</u>
05.04.00	05.10.00	07.09.01	11

15. By a decision dated 6th November 2001 this default was authorised to be included in the proceedings before the Solicitors' Disciplinary Tribunal.

Barclays Bank

16. In February 1999 Barclays received a request from the Respondent for the deeds of a property P Crescent, Scarborough which were needed in connection with a sale or remortgage of the property.
17. The deeds to the property were released to the Respondent by letter dated 11th February 1999. Under the terms of the letter, the Respondent was required among other things to undertake to return the deeds on demand or by February 2000. The letter required no response but the Respondent was advised that if he was unable to accept the terms upon which Barclays had sent the deeds then he should return the deeds immediately. He did not.
18. The deeds were not returned within the twelve month period and therefore Barclays wrote to the Respondent on 23rd February 2000 asking for the return of the deeds. The Respondent did not reply to the letter and therefore further reminders were sent on 20th April, 26th May and 31st July 2000.
19. Other solicitors were instructed by Barclays to seek the return of the deeds and wrote to the Respondent on 1st September and 12th September 2000. The author of the letter telephoned the Respondent on 26th September 2000 during which she spoke to the Respondent who confirmed he had received the letter and promised to deal with it shortly.
20. Letters and telephone calls were made in the absence of any response on 4th, 16th, 18th, 19th, 20th and 23rd October 2000. Further attempts were made without success by telephone on 6th and 14th November 2000. Accordingly the solicitors wrote a letter of complaint to the OSS by letter dated 20th November 2000.
21. The OSS wrote to the Respondent by letter dated 28th February 2001 and in the absence of a reply made unsuccessful telephone calls on 15th and 16th March 2001. As a result of the last phone call, a further letter was sent to the Respondent dated 23rd March 2001. The Respondent did not reply.
22. By letter dated 25th June 2001 the OSS advised the Respondent that the matter was to be referred for formal adjudication. By adjudication dated 9th November 2001 the Respondent's conduct was referred to the Solicitors' Disciplinary Tribunal. The Respondent was notified of the decision by letter dated 20th November 2001 and did not request any review of the decision.

The Submissions of the Applicant

23. The Respondent had admitted all the allegations but had said that in relation to allegation 2 the misleading was innocent. The Applicant had not alleged dishonesty in relation to that allegation in any event.
24. The Respondent had admitted allegation 1 and the Applicant had explained to him the likely consequences of that admission.
25. The advice of Counsel and the medical evidence in relation to DM which was before the Tribunal supported what the Respondent said in relation to the payment he had made to DM namely that it was towards the lower end of the parameters for damages advised by Counsel.
26. In relation to allegation 2 the Respondent would say that he had received no profit costs but only sums for disbursements and payments to Counsel.
27. The Tribunal was referred to the orders of the High Court in relation to the Barclays matter. The orders related the sorry tale of what the solicitors for Barclays had had to go through culminating in a finding that the Respondent had been guilty of contempt of court. No penalty was eventually imposed by the Court in that respect.
28. All the deeds had now been delivered and some, although not all, of the costs of Barclays Bank had been paid.

The Submissions of the Respondent

29. The only slightly contentious issue was in relation to allegation 2 in respect of which when the Respondent had written his letter he had in mind a distinction between profit costs and disbursements. He had never claimed profit costs in this matter.
30. The Respondent gave the Tribunal details of his professional history. The Respondent said that he thought he was regarded as being very successful professionally and in the voluntary work he did.
31. From the early 1990s the Respondent's wife had begun to adopt strange behaviour patterns involving days and then weeks of silence and finally she stopped all communication.
32. For the first time in his life the Respondent had been faced with something he could see no way of dealing with and he sank into depression.
33. The Tribunal was referred to the medical report submitted by the Respondent.
34. The Respondent had been diagnosed with depression in 1993. At that time anti-depressant drugs had had a bad reputation and the Respondent had declined them.
35. The Respondent had been unable to focus on his work or to motivate himself.
36. The Respondent gave details of his state of mind at the time which coincided with an overhaul of the legal profession.

37. The Respondent had done the advanced professional diploma in advanced litigation but had been unable to focus or deal with his work.
38. In July 1995 the Respondent had reluctantly left his matrimonial home.
39. In early 1996 the Respondent's partner had terminated the partnership with ten days notice.
40. During a difficult period of a partnership dispute lasting some fifteen months the Respondent had operated a separate business within his former practice.
41. Had the Respondent's domestic circumstances been different he would have considered a sabbatical or sick leave but the need to support his family and the pending divorce made the economics of giving up work very difficult.
42. Until early 1995 the DM file had been dealt with very efficiently. Proceedings had been commenced and advice sought from junior and Leading Counsel.
43. After mid 1995 when the Respondent left the matrimonial home the file had not received attention. Under the new Rules the case had been automatically struck out.
44. The Respondent accepted that he had been unable to face the situation.
45. Having set up practice on his own he had been looking forward to a new start and the DM matter was a blot on that new start.
46. The Respondent had made a decision which he would regret for the rest of his life and had "shadow settled" the matter by making payment to DM..
47. The payment made by the Respondent had been reasonable in the light of Counsel's advice and DM's medical statement. The reasonableness of the amount paid by the Respondent had been accepted in the decision of the Adjudication Panel dated 4th September 2001.
48. This had not been "a cheap buy off" by the Respondent. The Respondent had tried to make a fair and reasonable settlement.
49. The Respondent was also concerned at the effect on DM if he had had to start proceedings again with a claim against the Respondent. DM's doctor had indicated that the sooner the case was over for DM, the better.
50. In 1997 the Respondent had bowed to the inevitable and accepted anti-depressant drugs.
51. Shortly afterwards requests had been made for the delivery of the file.
52. The Respondent had accepted all the allegations against him in respect of delay in delivering the file. This was a result of his condition at the time.

53. By 2000 the Respondent was getting back on track. He had remarried and his business was developing.
54. This matter had come to light and once it was clear that the Respondent would inevitably face the Tribunal he had stopped practising and enabled the smooth hand over of his clients' files.
55. In the previous twelve months the Respondent had had no income other than the ongoing collection of outstanding fees. He had not felt able to progress his life.
56. The Respondent now felt that he was a stronger person. He had felt it right to come to the Tribunal to give a full explanation.
57. The Respondent had complete support of his wife and children.
58. Over the last six months the Respondent had had other personal difficulties relating to the serious illness of members of his family but had been able to cope in a way in which he would not be able to do a few years previously.
59. The Respondent was getting back to what for many years he always was.
60. The Respondent had accepted the allegation of dishonesty. However well meaning his intention he was aware that the almost inevitable consequence would be striking off.
61. He had accepted dishonesty in the sense of intentionally misleading his client. He accepted that a failure to disclose full information could be as bad as wrongful disclosure and he would not take issue with the allegation on the basis of semantics.
62. The Respondent had made no personal gain. His proper course of action would have been to refer the client to independent advice and to make a claim on his insurance. This would have involved the client in a longer wait for his damages.
63. The Respondent had served the profession since 1966 and he would like to think that that had been with some distinction for most of the period.
64. The legal profession had been his life and at the age of 52 his future was uncertain.
65. The Respondent had learnt expensively from his mistakes. He would like to think that the action he had taken a year ago was to his credit.
66. The Respondent was now stronger than in the brief period when things had not been as they should be.
67. The Respondent would like to think that the profession was not entirely closed to him in the future.
68. The Tribunal was asked to consider the documents in the Respondent's submissions. However wrong his action had been he had acted in many ways with the best possible motives and the client had not suffered.

69. The Respondent accepted that it would be a very unusual decision for the Tribunal not to strike the Respondent off but the Tribunal could take all matters into account.
70. Professionals could suffer from stress and depression and behave in erratic, lunatic ways.
71. The Respondent hoped that the door could be left open for him to continue to practise.

The Findings of the Tribunal

72. The Tribunal found the allegations to have been substantiated indeed they were not contested.
73. The Respondent had admitted all of the allegations but more particularly had admitted allegation 1 being dishonesty in a sense of intentionally misleading his client. The Tribunal noted that the misleading had continued for a considerable period. The facts had been known to the Respondent since DM's case was no longer pursuable. Misconduct had been aggravated by the delay on the part of the Respondent in the handing over the papers to the CAB.
74. The Tribunal had every sympathy with the personal position of the Respondent and gave him credit for attending personally before the Tribunal to explain his position. The Tribunal however had to be mindful of the protection of the public and the reputation of the profession. The Respondent had admitted serious misconduct including an act of dishonesty which was maintained and not corrected over a long period. The mitigation put forward by the Respondent was not such that it would be appropriate for the Tribunal to allow him to continue in practice. The Tribunal ordered that the Respondent John Edward Rayner of Scarborough, North Yorkshire, 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 £3,738.

DATED this 22nd day of August 2002

on behalf of the Tribunal

A G Ground
Chairman