

IN THE MATTER OF MICHAEL GEOFFREY FRANCE, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J C Chesterton (in the chair)
Miss T Cullen
Lady Maxwell-Hyslop

Date of Hearing: 25th June 2002

FINDINGS AND ORDER

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 Martin Marriott solicitor and partner in the firm of Gorvin Smith Fort of 6-14 Millgate, Stockport, Cheshire, SK1 2NN on 14th January 2002 that Michael Geoffrey France of Dapperly Park, Nottingham solicitor (now of unknown address) 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 unbefitting a solicitor in that he:-

1. failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors' Accounts Rules 1998 (the Rules);
2. withdrew money from client account in cash contrary to Rule 23 (3) of the Rules;
3. withdrew from client account a cheque payable to a creditor of his contrary to Rule 23 (3) of the Rules;
4. utilised client's funds for his own benefit;

5. failed to repay to the Legal Services Commission monies due to it upon the settlement of the case contrary to The Community Legal Services (Costs) Regulations 2000;
6. failed to file an Accountant's Report in accordance with Section 34 of the Solicitors Act 1974 for the period ending 30.6.01 within two months of that date or at all.

By a supplementary statement of George Marriott dated 11th October 2001 it was alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in that he failed to comply with the decision made by an Adjudicator on 23rd April 2001. An order that the said decision be treated for the purposes of enforcement as if it were contained in an order made by the High Court was also sought. The matters contained in the said supplementary statement had been adjourned from earlier proceedings.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25th June 2002 when George Martin 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.

At the conclusion of the hearing, in relation to allegations 1 to 6 the Tribunal confirmed the suspension from practice for an indefinite period which had already been imposed upon the Respondent as a result of the order made by a division of the Tribunal at a hearing on 23rd October 2001. The Tribunal made no order in respect of the allegation contained in the supplementary statement dated 11th October 2001.

The Tribunal hereby orders that the Respondent do pay the costs of and incidental to the application and enquiry fixed in the sum of £3,785.

The facts are set out in paragraphs 1 to 31 hereunder:-

1. The Respondent born in 1949 was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. The Respondent carried on practice as a sole practitioner under the style of Michael France at 57 Radford Road, Hyson Green, Nottingham, NG7 5DR.
3. Following authorisation the Respondent's books of account were inspected by the OSS Investigation Officer, ("the Officer"). The inspection started on 10th August 2001.
4. During the course of that visit, the Respondent indicated that many of his accounting records including bank statements and client account cash book were lost following a flood. He asserted that the box containing client ledger cards had been saved together with vouchers, copy bills and most cheque stubs and paying in book stubs.
5. He agreed that the client ledger cards were not posted up to date. He firstly asserted that they were "reasonably up to date" and that he extracted two lists of clients balances each month from two bankers which he reconciled individually to the two client bank accounts.

6. The Officer enquired as to when the last reconciliation had been done. Other than that the last reconciliation took place before the flood, he was unable to demonstrate when the last client account reconciliation had been completed. Accordingly he asked the Officer to adjourn the inspection for two weeks which the Officer agreed to do.
7. On the 24th August the Officer made a second visit to the Respondent who stated that he had not been able to bring the bookkeeping up to date. He produced to the Officer client bank statements from one bank to the 6th April 2001 and office account statements to the 6th October 2000. He stated that client ledger cards were written up to the middle of August 2001 but that they had not been reconciled to client account beyond the 30th November 2000. Accordingly the inspection was adjourned for a further two weeks so that the Respondent could bring up to date the bookkeeping.
8. On the 7th September 2001 the Respondent again stated that he had been unable to bring the bookkeeping up to date. He produced for the Officer a client account reconciliation to the 31st May 2001 but had not resolved differences beyond then. He stated that he had not received any replacement bank statements from the other bank where client monies were held.
9. Accordingly the Officer terminated the inspection on three grounds:-
 - 9.1 the Respondent had been unable to verify any client account transactions and balances relating to the RBS client bank account;
 - 9.2 the reconciliation of the Nat West client bank account was still in arrears;
 - 9.3 the office account had not been written up or reconciled.

RBS Clients

10. The list of liabilities to clients whose funds were held in the RBS client account as at the 31st May 2001 was produced for inspection. The items on the list were in agreement with the balances in the clients ledger and totalled £178.78. However in view of the absence of any bank statements the Officer could express no opinion as to whether the Respondent held sufficient funds in that client bank account to meet the liabilities to those clients.

Nat West Clients

11. A list to the same date was produced for inspection. The items in the list agreed with the balances shown in the clients ledger and totalled £60,327.27. After an allowance for uncleared items, there was a shortfall of £2,055.32.

Cause of the Shortfall

12. The shortfall was caused by three reasons:-
 - 12.1 Incorrect transfer from client to office bank account;
 - 12.2 Bank charges debited to client account;
 - 12.3 Book difference.Two are exemplified below:-

Incorrect Transfer £1,610.00

13. In May 2001 the client bank account was charged with a transfer of £1,610 which was not allocated to any account. The Respondent's explanation was that he had duplicated a transfer of costs in respect of a personal injury matter.
14. Upon further investigation that client account in the client ledger showed that there had been a client to office transfer of £1,645 in respect of a bill on 1st June 2001. The alleged duplicated transfer had in fact take place on the 23rd May 2001 or two days before. There was no evidence on the file to suggest that the transfer was duplication.
15. The Respondent then stated he had made "a crass error" and that the particular client matter was the only large amount of costs he had to transfer around that time. He could give no further explanation to the Officer.

Bank charges debited to client bank account £449.43

16. Various charges had been debited from client account between April and June 2001 including interest, repayment and an arrangement fee. The Respondent's explanation was that the fees in question were a loan from Nat West, which the bank had in error lodged into client bank account. He stated that the bank had refunded some of the entries but had not completed all the remedial entries required.

Other matters

Cash withdrawals from client account.

17. In interview the Respondent admitted that between January and June 2001 he had made nineteen withdrawals from client account by cheques payable to cash and one withdrawal by a cheque payable to a creditor Barclaycard totalling £5,503.09.
18. The detail in respect of all twenty items in clients cash book and on the relevant client ledger card was such to indicate that the funds had been transferred to office bank account.
19. The Respondent's explanation was that he believed the Solicitors' Accounts Rules had changed and that he could make these withdrawals in respect of his costs, and that he had done it to avoid incurring bank charges on his office bank account. He assured the Officer that the practice would cease immediately.
20. In 1999 during a previous inspection the Investigation and Compliance Office, Mr Shaw noted that the Respondent had also made cash withdrawals in respect of his costs from client bank account. Thirteen withdrawals between May and August 1999 totalling in excess of £4,000 had been made from client bank account by cheques drawn to cash.
21. His explanation then to the Officer was that this avoided funds being taken by RBS in respect of overdraft repayment but the practice would cease.

22. On the 21st September 1999 the Respondent signed a certificate which in terms stated that he accepted the breaches, agreed to take corrective action and acknowledged that the failure to carry out such corrective action could result in disciplinary action.

Community Legal Services (Legal Aid)

23. During the currency of his inspection the Officer agreed with the Respondent that the Respondent had acted in connection with two personal injury matters which completed in June 2000 and March 2001, that he had recovered his costs from the defendants and that therefore there would be no claim on the Commission.
24. The Respondent failed to report those facts to the Legal Services Commission and failed to complete the appropriate paperwork, which would have allowed the Commission to recoup the money totalling £3,049.51 which the Respondent held in client account.

Accountant's Report

25. The Respondent was due to file his Accountant's Report for the period ending 30th April 2001 within two months i.e. 30th June 2001. He asserted:-
- a. that he had asked the Law Society for an extension of time but produced no evidence to support that and
 - b. that his accountants had not done the requisite work. Upon telephoning the accountant, the Officer discovered that he had not been instructed to prepare the reports.
26. By letter dated 19th October 2001 the OSS sought from the Respondent confirmation that he had obtained replacement bank statements for the RBS client account, and had replaced the shortage in client account. The OSS also sought his comments upon the report which was enclosed with that letter. The Respondent replied by undated letter but received at the OSS on the 29th October. In terms he said as follows:-
- a. the shortage in client account had been repaid;
 - b. the Accountant's Report dated October 2000 had to be filed by the 20th March 2001;
 - c. he believed cash withdrawals from client account were permitted;
 - d. that he was no longer doing legally aided work and that the Legal Services Commission would not accept a cheque for the amount that he held;
 - e. he had not received any statements from the RBS.
27. By decision dated 7th November 2001, among other matters the Respondent's conduct was ordered to be referred to the Tribunal.
28. C, a client, made a complaint to the OSS in respect of the legal services provided by the Respondent.
29. Following an investigation an Adjudicator made an order dated 23rd April 2001 directing the Respondent to pay to Mr C the sum of £300 within 14 days of being notified of the decision and to deliver his papers to Mr C or to his order immediately.

30. The Respondent was notified of the decision by letter dated 27th April. The Respondent did not appeal the decision; therefore payment should have been made by the Respondent to Mr C and the papers delivered to his new solicitors on or before 13th May 2001.
31. At the date of the application payment had not been made.

The Submissions of the Applicant

32. The Applicant was not alleging dishonesty against the Respondent but rather complete disorganisation within an office and that had been the reason for the intervention.
33. In relation to the incorrect transfer of £1,610.00 the Respondent had described this matter as “a crass error” and that was as high as the Applicant put it.
34. In relation to the cash withdrawals from client account the Respondent had been entitled to the money and it was not alleged that this was clients’ money. The money should however have been transferred to the office account instead of which the Respondent had drawn it straight out of client account.
35. In fairness to the Respondent the Applicant informed the Tribunal that the intervention agent had wanted the Applicant to explain to the Tribunal that as far as he could see there would be no claim on the Compensation Fund arising out of the Respondent’s practice.
36. The Applicant could say that there had been two modest claims but these were disputed and no payment had been made.
37. The order of the Adjudicator which was the subject of the allegation in the supplementary statement dated 11th October 2001 remained a live matter. The Applicant had received a letter from C’s solicitors stating that as at 14th June 2002 the compensation had not been paid and the file had not been released.
38. The Applicant accepted that following the intervention the release of the file would be difficult for the Respondent but in the submission of the Applicant the Respondent had had plenty of opportunity prior to the intervention to release the file but had not done so.
39. The Applicant sought an order for enforcement.

The Submissions of the Respondent

40. The Matter of C went back to the previous disciplinary proceedings. The Respondent honestly believed that C had been paid.
41. Following the order of the Tribunal on 23rd October 2001 the Respondent had had to decide whether or not to continue in practice. Either way he had to comply with the terms of the disciplinary proceedings.

42. The Respondent had “buried the hatchet” with his accountants. He had got all of C’s papers together. He had thought that C had been paid at the same time as he had put his accountants in funds because at that time the Respondent had made an arrangement with his family to pay fines and costs from the previous disciplinary proceedings.
43. In relation to the other allegations, these were not disputed save for one incorrect factual matter relating to the cash withdrawals from client account. The Respondent thought that the cheque stated as being payable to Barclaycard had in fact been paid into a building society account and then used. The Respondent did not dispute that the cheque had been drawn.
44. The Respondent’s office had been flooded three times, the last time being early last year. This had caused substantial problems.
45. The Respondent also had problems getting bank statements from his bank over a six month period so he had been unable to instruct his accountants to do their reports. The Respondent had obtained these by the time of the intervention and they had been handed over.
46. The cash withdrawals had been over a short period of time (the Respondent accepted the Applicant’s submission that the period had been four months.) The Respondent had thought there had been a change in the Rules. He had been advised to check the situation, he had done so with the Ethics Committee of the Law Society and found that he had been wrong and had stopped that practice before the Investigating Accountant had come in.
47. The Respondent had also approached a bookkeeper to come and work for the firm to ensure that books would not be so far behind.
48. One reason that the books were so far behind was that the firm was doing work on a pro bono basis. The Respondent’s firm was in a very deprived area.
49. The Respondent’s firm had not been big enough to obtain a Legal Aid franchise. The Respondent had applied but shortly before the order he had been hospitalised for three weeks. He had been told to reapply but in the meantime had been asked not to close down.
50. The firm had carried on looking after the people they had looked after when they had been able to do legally aided work.
51. It was difficult for people in the area to get to a publicly funded practice and the firm had hoped to fund free work from their paying work. The firm had a long history of people coming in off the street for help.
52. The Respondent had taken on too much work. He accepted the Applicant’s comment regarding chaos. Without outside help the Respondent could not have continued in any event.

53. The bank charges debited to client account had occurred because of a bank error. The Respondent had arranged a small practice loan on office account but the bank had charged the client account with the interest and charges.
54. The Respondent did not know how the incorrect transfer of £1,610.00 had occurred. It had been a crass error and had been paid back.
55. The Respondent had obtained bank statements and instructed his accountants and without the intervention matters would have been revealed by the Respondent's own accountant and thereby brought to the notice of the Law Society. There had been no dishonesty by the Respondent.
56. The Respondent accepted that he would not be able to work in private practice other than supervised. He had had his chance and "blown it".
57. The Respondent had not worked since the intervention. He had sold his home. He was the only person who had suffered, his clients had not. He had suffered very severely as a result of the chaos in his office which had not happened for any dishonest motive. He had been trying to do too much on too little budget for too many people.
58. He had therefore not been able to keep his paperwork up to date and this had been compounded by the flood and by the fact that he could not obtain bank statements.
59. The Tribunal on 23rd October 2001 had ordered that the Respondent be suspended from practice indefinitely unless by 20th November 2001 he had lodged the outstanding accountant's report and paid the outstanding sums due to the Solicitors' Indemnity Fund. He had been unable to comply with this because the intervention had occurred. The Respondent had instructed his accountants prior to the intervention and had intended to comply.
60. Misguided and chaotic were the appropriate words to describe what had occurred. The Respondent accepted that he would have to stay suspended.
61. The Respondent could not be sure that he had paid C. To check this the intervention agent would need to go through the account. The Respondent would have no objection to an enforcement order and said that he would check with the intervention agent and if C had not been paid the Respondent would pay him.
62. The Respondent apologised to all concerned. His motives had been good but his methods had been bad. The Respondent had suffered some stress related problems and it was possible he would need to seek medical help in due course as part of coming to terms with his future.

The Findings of the Tribunal

63. The Tribunal found allegations 1 to 6 to have been substantiated indeed they were not contested.
64. In relation to the allegations contained in the supplementary statement there appeared to be genuine doubt about whether or not the Respondent had paid C prior to the

intervention. The Applicant had agreed to suggest that C's solicitors contact the intervention agent. Given the uncertainty of the situation the Tribunal declined to make an enforcement order.

Previous Appearances before the Tribunal

65. At a hearing on 14th March 2000 the following allegations had been found to have been substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that:-

- (i) he failed promptly to file Accountant's Reports in accordance with Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
- (ii) he failed to comply with a duly made decision of the Professional Regulation Casework Sub-Committee (A).

At the hearing on 14th March 2000 the Tribunal took due note that the outstanding Accountant's Reports had been filed with the Law Society albeit somewhat late and they also gave the Respondent credit for the confirmation by the Investigation Accountant of the OSS that the Respondent's books of account were in order. The Tribunal considered that the Respondent's main fault had been to allow a situation where he was not served well by a firm of accountants to run on for too long. The outstanding Reports were easily prepared when new accountants were instructed. The Tribunal noted that the new accountants and the Respondent himself took the filing of Accountant's Reports with the Law Society seriously and no delays would be countenanced in the future.

In all of the circumstances the Tribunal on 14th March 2000 considered it right to impose a reprimand upon the Respondent and ordered him to pay the Applicant's costs.

66. At a hearing on 23rd October 2001 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that:-

- (i) he failed to lodge outstanding Accountant's Reports for the six monthly periods ending 31st October 1999, 30th April 2000 and 31st October 2000 within two months;
- (ii) he failed to comply with the decision made by an Adjudicator on the 3rd July 2000.

By a supplementary statement of George Marriott dated 18th June 2001 it was further alleged against the Respondent that he had been guilty of conduct unbecoming a solicitor in that he:-

- (iii) failed to make or cause to be made to the Solicitor's Indemnity Fund contributions for the practice of which he was a principal on the 1st September contrary to Rule 31 of the Solicitors Indemnity Rules 1998;
- (iv) failed to deal with correspondence from the OSS;
- (v) by reason of the above compromised and impaired his good repute and that of the profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990.

At the hearing on 23rd October 2001 the Tribunal noted the submissions of the Respondent at the hearings on March 2000 when he said he would never allow such a situation to arise in the future. Despite that assertion the Respondent had been found guilty of a further serious case of non-compliance. Regulation of the profession was essential in the interests of the public. The Respondent had already been subject to a specific condition that he file Accountant's Reports within a shorter than normal period and he had failed to comply with that condition and indeed in relation to the Report for the period ending 31st October 2000 the Respondent had exceeded even the more usual period allowed for filing of six months.

Failure to pay the outstanding premiums due to the Solicitors Indemnity Fund was serious and raised concerns as to the state of the Respondent's practice and the Respondent's present position in respect of Professional Indemnity Insurance.

The Respondent by his conduct was wholly failing to comply with the requirements of his regulatory body. There was no allegation of dishonesty against the Respondent but it was not possible for clients' interests to be protected if solicitors' accounts were not properly regulated and insurance premiums were not paid.

The situation was too serious to be allowed to continue and the appropriate penalty was for the Respondent to be suspended from practice unless he regularised his position quickly.

The Tribunal therefore ordered that the Respondent be suspended from practice as a solicitor for an indefinite period such suspension to commence on 20th November 2001 provided that if by that date the Respondent had satisfied the Clerk to the Tribunal:-

- (i) that he had lodged with the Law Society the outstanding Accountant's Report for the six month period ending 31st October 2000; and
- (ii) that he had paid the outstanding sums due to the Solicitors Indemnity Fund identified in paragraph 17 of the Supplementary Statement of George Marriott dated 18th June 2001 namely the aggregate sum of £14,394.66,

then the suspension should not take effect and a fine of £5,000 should be substituted therefor.

The Respondent was also ordered to pay costs.

Hearing of 25th June 2002

67. At the hearing on 25th June 2002 the Tribunal noted what had been said at the previous hearings. There was on the present occasion no allegation of dishonesty against the Respondent but there had been serious breaches of the Accounts Rules and a further failure to file an Accountant's Report. However good the Respondent's motives may have been in taking on pro-bono work he had allowed his paper work and his accounting systems to fall into chaos. The Solicitors' Accounts Rules were there for the protection of the public and must be adhered to. Where accounts were in such chaos that Officers of the regulatory body could not establish whether a firm had

sufficient funds in client bank account then it was not possible to ensure the protection of clients' funds. There was no suggestion that the Respondent had in any way misappropriated clients' funds but this was his third appearance before the Tribunal having appeared previously in relation to accounting and regulatory matters. All the various allegations against the Respondent merged into one chaotic mess. It was not right that the Respondent be allowed to practise. Having failed to comply with the order of a previous Tribunal the Respondent was already indefinitely suspended from practice. That was a penalty which this Tribunal would have considered appropriate in respect of the current allegations and the Tribunal confirmed the indefinite suspension. The Tribunal further hereby orders that the Respondent pays the costs of and incidental to the application and enquiry fixed in a sum of £3,785.00.

DATED this 12th day of September 2002

on behalf of the Tribunal

J C Chesterton
Chairman