

IN THE MATTER OF MARGARET ANNE DAVIES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. RJC Clitheroe (in the chair)
Mr. SN Jones
Mr. DE Marlow

Date of Hearing: 27th June 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 Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh, Colonial Chambers, Temple Street, Liverpool, L2 5RH on 30th January 2002 that Margaret Anne Davies of Clifton, Bristol, Avon, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) that she failed and/or in the alternative delayed in the delivery up of papers to a former client and/or the former clients new solicitors;
- (ii) that she made a representation to a client that was misleading and/or inaccurate;
- (iii) that she failed and/or delayed in replying to correspondence from the OSS;
- (iv) that she failed and/or in the alternative delayed in complying with a direction of the Adjudication Panel dated 13th September 2001.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included affidavits of service handed up, the oral evidence of Mr H. The Respondent had faxed the letter to the Applicant dated 26th June 2002 which is referred to in detail under the heading "The Submissions of the Respondent" below.

At the conclusion of the hearing the Tribunal ordered that the Respondent Margaret Anne Davies of Clifton, Bristol, Avon, solicitor be struck off the Roll of Solicitors and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the sum of £2,750.

The facts are set out in paragraphs 1 to 18 hereunder: -

1. The Respondent, born in 1954, was admitted as a solicitor in 1980.
2. When Mr H instructed the Respondent she was employed as an assistant solicitor by Messrs Merrick & Pereira of 80/82 Station Road, Yate, Bristol, Avon, BS37 4PH.
3. By letter dated 21st December 1998 Messrs Lewis & Harrison solicitors of Victoria House, Park Way, Newbury, Berkshire made complaint to the OSS about the Respondent's conduct in relation to her former client, Mr H, for whom they were then acting.
4. The Respondent acted on behalf of Mr H in connection with two personal injury claims arising out of accidents that occurred in January 1990 and November 1990. The claim arising out of the accident that took place on 30th November 1990 was successfully concluded in or about March 1995.
5. The complaint of Lewis & Harrison was that the Respondent had retained Mr H's file of papers and had failed to produce it despite requests to do so. The solicitors enclosed a copy of a letter written by Messrs Merrick & Pereira, the Respondent's former employers dated 11th September 1998 addressed to the OSS. Messrs Merrick & Pereira indicated that upon the Respondent's departure from their office it was discovered that the files relating to Mr H's claims were missing and had been taken by the Respondent sometime prior to her departure. The Respondent had indicated that she had taken the file to discuss the claim with a specialist personal injury lawyer friend.
6. By letter dated 26th January 1998 to Messrs Merrick & Pereira, the Respondent indicated that she was going to collect the file from her friend and would return same with a report on the matter. Despite assurances that she would do so, the Respondent failed to deliver up the file.
7. By letter dated 31st May 1998 the Respondent wrote to Messrs Merrick & Pereira from France indicating that she would be back in Bristol the following Monday and would then prepare a report detailing the position on Mr H's case and would deliver up the file to a solicitor near her home for onward transmission to Merrick & Pereira through the DX system. Despite reminders the file was never produced and as a consequence Mr H instructed Messrs Lewis & Harrison in regard to the matter.

8. By letter dated 4th November 1998 the OSS wrote to the Respondent enclosing a copy of the letter from Messrs Merrick & Pereira with a request that she consider the issues raised therein and whether there were any steps that she could take to resolve the complaint. The Respondent failed to reply or resolve the complaint.
9. By letter dated 10th April 2000 the OSS wrote to the Respondent setting out the complaints put forward by Mr H and seeking her explanation. By letter dated 3rd May 2000 Merrick & Pereira wrote to the OSS providing further information and in particular making reference to a letter written by the Respondent dated 26th January 1998 in which she indicated that she had not been able to resolve Mr H's claim with the consequence that the limitation period had expired for which she accepted full responsibility.
9. By letter 24th May 2000 the OSS wrote to the Respondent indicating that as no response had been received to the OSS letter of 10th April 2000 the matter was to be passed to the Solicitors Practice Unit for further action.
10. By letter dated 24th August 2000 the Solicitors Practice Unit wrote to the Respondent seeking her formal explanation in relation to the delay in progressing Mr H's claim between January 1990 and 1997 by which time the claim had become statute barred. The Respondent did not reply or provide written explanation save that on 5th September 2000 she telephoned the OSS indicating that she had only just received the letter of 24th August 2000 and requested an extension of time to respond. The Office agreed an extension until 19th September 2000.
11. No written response or explanation was provided. The OSS wrote to the Respondent by letter dated 10th October 2000 making reference to the telephone conversation on 5th September 2000 and advising the Respondent that failure to respond to correspondence could be treated as professional misconduct. The Respondent did not reply or provide written representations.
12. By letter dated 12th January 2001 the OSS wrote to the Respondent enclosing copies of the earlier letters dated 24th August and 10th October 2000 and again pointed out that it was unprofessional conduct to fail to reply to letters from the OSS. The Respondent did not reply or provide written explanation.
13. By letter dated 18th June 2001 the OSS wrote to the Respondent enclosing a case note and inviting her to make representations within 14 days. No representations were received.
14. By letter dated 3rd August 2001 Messrs Stephen Weighell & Co, who acted on behalf of Mr H wrote to the OSS making additional comments and enclosing a copy of their earlier letter dated 29th March 2001. The Solicitors referred to the fourth paragraph of the letter dated 29th March 2001 in which it was said:

"Essentially throughout the handling of our clients accident claim by Ms Davies she made it clear to him on numerous occasions that the case was progressing. Indeed just before Christmas 1997 our client was told by Miss Davies that the insurers for those responsible for the accident had made an offer of some £5,000 to settle the claim. Miss Davis told Mr Hamilton that

she was seeking the advice of a colleague of hers as regards whether or not such figure should be accepted."

15. Stephen Weighell & Co indicated that having regard to the enquiries they had undertaken there was no evidence of proceedings ever having been issued in respect of the original accident and no evidence of any offer having been made by an insurer in or around Christmas 1997 by which stage the original accident claim was in any event statute barred.
16. By letter dated 9th August 2001 the OSS wrote to the Respondent enclosing a copy of Stephen Weighell & Co's letter dated 3rd August 2001 seeking her explanation in respect of the additional allegation of misleading Mr H about the status of his claim and in particular that she misled him by indicating that an offer of settlement of £5,000 had been made in or around Christmas 1997. The Respondent did not reply or provide written explanation.
17. By letter dated 28th August 2001 the OSS wrote to the Respondent enclosing a memo that had been prepared in addition to the earlier case note and confirming that the matter was to be referred for formal adjudication.
18. The matter was considered by the Adjudication Panel on 13th September 2001 which in addition to resolving to refer the conduct of the Respondent to the Tribunal also directed at paragraph 3 of its Resolution as follows:

"3. The Adjudication Panel resolved to direct that Miss Margaret Ann Davies deliver up to Stephen Weighell & Co within 7 days of the date of the letter containing notification of this decision all documents in her position concerning Mr Hamilton."

The Direction was not complied with.

The Submissions of the Applicant

19. It was a serious matter for an Officer of the Court to mislead a client. The Respondent had made no progress with Mr H's claim and what she had told Mr H had been wholly contrary to the true position.
20. The file had eventually been produced and there was no suggestion that any papers had been destroyed. The Respondent had not complied with the direction made by her own professional body.
21. In his evidence Mr H said he did not know whether the file had now been delivered but the matter had been settled by the Respondent's insurer in the sum of £9,000.

The Submissions of the Respondent

22. The Respondent's submissions contained were in the Respondent's above mentioned letter dated 26th June 2002. The Respondent was unable to attend the hearing owing to her personal circumstances. She could not travel to London.

23. The Respondent said she would fax a typed sheet of her comments to the Tribunal as soon as she was able.
24. The Respondent confirmed the contents of Mr H's statement although she could not recall telling Mr H that she had received an offer of £5,000. She could not categorically state that she had not made that statement.
25. The Respondent confirmed that she would agree the Applicant's costs in the sum of £2,750. She would wish to pay those by instalments as she was a single parent in receipt of income support and was not in a position to pay a lump sum.

The Findings of the Tribunal

26. The Tribunal found all of the allegations to have been substantiated.
27. The Tribunal accepted the evidence of Mr H in its entirety. It was a matter for regret that there appeared to have been no explanation from the Respondent. The Respondent had misled a client which was a most serious matter for a solicitor and officer of the Court who is required to exercise probity, integrity and trustworthiness in all of his or her dealings whether with clients or with others.
28. The Respondent further had seriously been at fault in her failure to respond to her professional body.
29. She had not returned papers to a client when he required them and had deliberately misled a client. The Respondent had offered no credible explanation.
30. The Tribunal concluded that the Respondent was not fit to practise and they ordered that she be struck off the Roll of Solicitors and further ordered that she should pay the costs of and incidental to the application and enquiry in the agreed fixed sum.

DATED this 12th day of September 2002

on behalf of the Tribunal

J R C Clitheroe
Chairman