

IN THE MATTER OF TIMOTHY JOHN MOLES, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W M Hartley (in the chair)
Mr. A N Spooner
Mr. G Fisher

Date of Hearing: 4th July 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 Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts, SG14 1BY on 12th February 2002 that Timothy John Moles solicitor of Wimbledon, London SW20 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 each of the following particulars:

- (i) that he failed to file an accountant's report within the time permitted by Section 34 of the Solicitors Act 1974;
- (ii) that he, being a solicitor who had in force a Practising Certificate did fail to give to The Law Society notice of a change in his place of business before the expiration of 14 days from the date upon which the change took effect contrary to Section 84(1) of the Solicitors Act 1974;
- (iii) that he failed to comply with a condition on his Practising Certificate contrary to Section 13A of the Solicitors Act 1974;
- (iv) that he failed to respond to correspondence and telephone calls from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th July 2002 when Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts, SG14 1BY appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent contained in his letter of 2nd July 2002 to the Applicant.

At the conclusion of the hearing the Tribunal ordered that the Respondent Timothy John Moles of Wimbledon, London, SW20 solicitor be suspended from practice as a solicitor for an indefinite period to commence on 4th day of July 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,224.32.

The facts are set out in paragraphs 1 to 7 hereunder:

1. The Respondent, born in 1950, was admitted as a solicitor in 1975 and his name remained on the Roll of Solicitors.
2. At the times material to the application the Respondent was in practice on his own account as Timothy J Moles at 13 Applemarket, Kingston-upon-Thames, Surrey, KT1 1JE and from 1st October 2000 as a salaried partner at the firm of MacLavery Cooper Atkins of 25 Union Street, Kingston-upon-Thames, Surrey, KT1 1RP.

Allegation (i)

3. The accountant's report for the firm of Timothy J Moles for the year ending 30th April 2000 was due to be delivered by 31st October 2000. At the date of the hearing it still remained outstanding.

Allegation (ii)

4. For the purpose of facilitating the service of notices and other documents, Section 84(1) of the Solicitors Act 1974 requires a solicitor who holds a Practising Certificate to give notice to The Law Society of any change in his place of business within 14 days from the date of the change. On 26th September 2000 the Respondent did notify The Law Society of a proposal to amalgamate with MacLavery Cooper Atkins aforesaid "very shortly." He started to work with this firm as a salaried partner on 1st October 2000 and should therefore have reported this fact to The Law Society on or before 15th October 2000. No such notification was received, nor was The Law Society notified of the closure of Timothy J Moles. Telephone calls made after 1st October 2000 to the Respondent's former office number were automatically redirected to his new place of employment.

Allegation (iii)

5. The Respondent had failed to comply with a condition imposed upon his 1998/9 Practising Certificate by failing to attend a Practice Management Course. On 6th November 2000 an adjudicator considered his application for a Practising Certificate for the practice year 1999/2000 and found that he had breached the condition on the previous year's certificate and reprimanded him severely for this. The adjudicator granted the Respondent a Practising Certificate for 1999/2000 subject to conditions:
 - (a) that within two months from the date of the decision (i.e. by 6th January 2001) he should attend a one day Practice Management Course and provide evidence

to the OSS (within two weeks of attendance at such course) that he had attended.

- (b) that the Respondent did not take on any responsibility for a trainee solicitor.
6. The Respondent had admitted in a telephone conversation with the OSS on 8th January 2001 that he had failed to attend a Management Course before 6th January 2001. The Respondent was therefore in breach of a condition of his Practising Certificate.

Allegation (iv)

7. The Respondent was informed of the Adjudicator's decision of 6th November 2000 referred to above under cover of a letter bearing the same date. He was written to again on 4th December but did not respond to either of these letters. He did not respond to a telephone call made from the OSS on Friday 5th January 2001. He was contacted again on 8th January where, as referred to above, he conceded that he had not attended a Practice Management Course as required. The first written response received from him was dated 13th February 2001 following two letters sent to him by the OSS on 6th February.

The Submissions of the Applicant

8. No dishonesty was alleged against the Respondent.
9. All the allegations involved admissions which even individually could not be viewed lightly. Collectively they were even more disturbing.
10. The Respondent's letter of 2nd July 2002 contained his admissions to the allegations together with mitigation. The Respondent had said in effect that because he was so busy with a demanding clientele and outside activities he had not given sufficient time to administrative matters.
11. In relation to allegation (i) the accountant's report remained outstanding.
12. Allegation (ii) was not the most serious of its type. The Respondent had notified The Law Society that he was vaguely thinking of making the change in his place of business before he had done it but he had then forgotten to notify The Law Society after he had done it. In fairness to the Respondent telephone calls to his old office had automatically been re-routed. This was not a case of a solicitor disappearing and leaving matters up in the air.
13. In relation to allegation (iii) the Respondent had said in his letter of 2nd July 2002 that he had attended a Practice Management Course in February or March of 2001.
14. The Respondent had not provided any proof of this merely saying in his letter that the firm for whom he had worked would have it in their records.

The Submissions of the Respondent

15. The submissions of the Respondent were contained in his letter to the Applicant dated 2nd July 2002 which said as follows:

"I confirm that a copy of this letter is being sent to the Tribunal and I would request that the contents of this are placed before the members. I understand this matter can proceed and be dealt with in my absence and in the circumstances described below would request that this be the position.

With reference to the last paragraph of your letter of 21st June I do not propose to take any point as to the period of Notice given to me so far as the Notice to Admit the documents is concerned.

So far as the documents themselves are concerned. I would be grateful if the Members of the Tribunal and yourself accept this letter as my admission of the said documents and would be grateful if indeed the matter could be dealt with as suggested by you on the basis of the documents and the contents of this letter.

I would further advise that having had the opportunity now of perusing your Application and the said documents there are no points which I would wish to dispute per se, but again would ask that the matters set out in this letter are taken into account.

May I refer to Document 17, the letter from MacLavery, Cooper Atkins to the OSS dated 17.10.01 at page 43 of the List of Documents and to the reference to my being on sick leave. The mugging referred to did indeed occur but the enforced absence from work led me to a realisation that I had for some time been under enormous and ridiculous pressure and that I had in effect suffered a nervous/mental breakdown. From the 14th October I was on sick leave and from the end of November 2001 was released from my contractual employment obligations with MacLavery Cooper Atkins and have not worked since that time.

Having sought medical advice I am currently prescribed Fluoxetine - a form of Prozac - for depression and I envisage that continuing for some time. I realise that I should have taken that medical advice a long time previously and many of my personal difficulties might have been avoided.

I have found the sheer effort of reading your Application and supporting documents and of writing this letter exceptionally stressful - to the point of shaking - hence, I realised that for the time being any form of intellectual employment is probably beyond me.

I would also need to mention that from the beginning of this year I have intermittently suffered severe chest pains and again medical advice was that my blood pressure was ridiculously high. I have been undergoing a series of hospital tests and presently await an appointment with a cardiologist to establish whether operations are to be called for or whether permanent further medication is the answer. Again until this has been resolved there would be no realistic prospect of employment.

Whilst in practice on my own account I had specialised in Legally Aided Criminal Defence work and Traffic work. In the last three or four years until the practice ended in September 2000, when I joined MacLavery Cooper

Atkins, I had not been involved in any work involving the holding of client money other than a sale and purchase for my in-laws.

I participated fully in the Court Duty Solicitor Scheme for Kingston Magistrates Court (with very few solicitors) and was a member of the Police Station Scheme for Kingston from its inception until October 2001. Incidentally I also was the Administrator for those Schemes and in that capacity as well, being a local solicitor I was a member of the Kingston Magistrates Court Local Users Committee, the Youth Court User Committee and the Kingston Crown Court User Committee.

I was also presented with a couple of high profile drugs cases by the Police where my clients in each case were giving evidence for the Crown in multi-million pound drug importations. Looking back I now appreciate that I was probably foolhardy to accept these cases because they in fact only added substantially to the pressure I was under.

The difficulty was that my practice was in fact successful - many people have been helped through difficult court cases - and in such a situation one finds it impossible to say "No" when asked for help and the result has been that my ability and resolve and indeed time to deal with important administrative matters suffered and has had further unhappy consequences on my life.

I realised that as the question of franchising in the Legal Aid field and the subsequent onset of Contracting with the Legal Services Commission became ever more important that I would not have the resilience to deal with this and therefore took the view that I could best serve my client base by closing my firm and "incorporating" with MacLavery, Cooper Atkins - please see that firm's letter of 5th February 2002 (Document 8) at page 14 of the List of Documents.

Regrettably work was not the only area where I took on positions of responsibility which with hindsight I should not have done. I have always been an enthusiastic supporter of my local Church participating in various services and events. I agreed to become a member of the Parish Church Council and subsequently to become Chair of same. That of course is voluntary but is also time consuming.

I was then asked by a local private school run by a Religious Order to advise on various matters and subsequently to become a Founder Member of the Board of Governors, a position in which I served for some 4/5 years - until the early part of 2001. Again a very time consuming occupation.

I am not seeking any credit for these matters but to simply say that I in fact took on far more than I could handle and now have to face the consequences. Actually the worst consequences have already happened. At some stage I fell into the black hole of a breakdown and feeling I had failed on every count left my wife and former matrimonial home in March 2001.

The home was sold in September 2001 with half of the equity going to Revenue to cover my tax assessment. I'm only beginning to try to deal with

this. The other half of the equity has gone to my wife for her to purchase a small flat in her own name.

The divorce has proceeded in September/October 2001 and was made Absolute in February this year.

I have thus lost everything I ever held dear to me. My practice through whom I helped so many people, my home and my wife of some 29 years of marriage. Anything of value in our home is now with my ex-wife. The address I now live at is with my mother. I have a small bedroom and we try to support each other, I have no legal or equitable interest in this property and have no assets or savings. Indeed I have a number of debts still to be resolved.

I have no income of any form and have not as yet applied for benefits. My mother is an old age pensioner and I exist on her pension and savings.

I did not wish this letter to sound emotional but merely to set out my facts and position. I tender my apologies for all the trouble I appear to have caused. I apologise for my lack of communication. It is I have discovered a facet of the breakdown.

So far as the Accountants Reports are concerned this evidently was due to financial differences with my accountant. I have now appointed a new accountant to deal with this and the Revenue.

So far as the Practice Management Course was concerned I did in fact attend in February or March of 2001 and all details are with MacLavery Cooper Atkins.

As will be apparent I have not yet discovered where or what my future may be. I do know and assure you I will not seek to practise on my own account again and furthermore would not seek to take on or accept the responsibility of partnership. All I would hope is that once my medical situation has been resolved, it may be possible to me to serve the community in some capacity."

The Findings of the Tribunal

16. The Tribunal found the allegations to have been substantiated indeed they were not contested.

Previous appearance before the Tribunal

17. At a hearing on 21st July 1998 the following allegations had been substantiated against the Respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:
- (a) he had failed to account to a client for interest on monies held on that client's behalf;
 - (b) he had failed to respond to letters from the Solicitors Complaints Bureau and the Office for the Supervision of Solicitors.
18. The Tribunal found the Respondent's failure to be extraordinary. He had ignored letters addressed to him by his own professional body which was a serious matter in

itself. He had held a substantial sum of money on behalf of a client and had made no attempt to ensure that it was on an interest earning account. He was in breach of the requirement that a solicitor account to a client for interest and over a long period of time despite requests, and demands for a formal explanation by his own professional body he had not paid the sum calculated to be £2,118.00 to his former client's new solicitors.

19. The Tribunal noted that the Respondent had incurred a substantial out of pocket expenditure on behalf of his former client but he appeared to have taken no steps whatsoever to seek payment of those disbursements from his former client. He had confirmed to the Tribunal that he would on the day of the hearing send a cheque to the former client to discharge the interest calculated by the OSS to be due to that client. The Respondent had given no indication to the Tribunal that he had any difficulty in raising the money to make that payment.
20. The Respondent's behaviour had been extraordinarily foolish and unprofessional. Such behaviour on the part of a solicitor served only to damage the good reputation of the solicitors' profession. In order to mark the seriousness with which the Tribunal viewed the Respondent's behaviour it ordered him to pay a fine of £2,500 together with the applicant's costs in a fixed sum.
21. At the hearing on 4th July 2002 the Tribunal noted the Respondent's previous appearance before the Tribunal and the comments of the Tribunal on that occasion.
22. The Respondent had again in the present proceedings been found guilty of serious failures in relation to his regulatory body. The Tribunal noted that the accountant's report remained outstanding. It was essential in the interests of the public that solicitors comply with the requirements of the regulatory body no matter what were the demands of a busy practice or of other activities. The Respondent had clearly failed in his duties in that regard and that failure was ongoing in relation to the filing of the accountant's report. These were matters which the Tribunal regarded as very serious particularly given the Respondent's previous appearance before the Tribunal which should have served as a warning to him. The Tribunal had noted carefully the points put in mitigation in the Respondent's letter of 2nd July 2002 but had concluded that the Respondent should not be permitted to practise as a solicitor. The Tribunal ordered that the Respondent Timothy John Moles solicitor of Wimbledon, London, SW20 solicitor be suspended from practice as a solicitor for an indefinite period to commence on 4th day of July 2002 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,224.32.

DATED this 9th day of September 2002

on behalf of the Tribunal

W M Hartley
Chairman