

IN THE MATTER OF ANDREW JOHN TEMPEST, Solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W.M. Hartley (in the chair)
Mrs. E. Stanley
Mr. D.Gilbertson

Date of Hearing: 24th September 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 Geoffrey Williams, solicitor of 2A Churchill Way, Cardiff CF1 4DW on 18th February 2002 that Andrew John Tempest, solicitor of Messrs Rees Jones Huntbach & Phoenix of Hanley, Stoke-on-Trent (now of Rough Close, Longton, Stoke-on-Trent) might be required to answer the allegations contained in the statement which accompanied the application and that such orders might be made as the Tribunal should think right.

The allegation against the Respondent was that he had been guilty of conduct unbefitting a solicitor in that he had given false and misleading information to a client.

An order was also sought that the Direction of the OSS dated 30th July 2001 that the Respondent do pay the sum of £2,500 by way of compensation for inadequate professional services rendered to a client, Mrs PW, be treated for the purposes of enforcement as if it were contained in an Order by the High Court.

By a supplementary statement of Geoffrey Williams dated 29th August 2002 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in each of the following further respects, namely:-

- (a) [Withdrawn with the consent of the Tribunal];
- (b) That he had failed to provide material information to a client in the course of a conveyancing transaction;

(c) That he had failed to reply to correspondence from the OSS.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2002 when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF1 4DW appeared as the Applicant and the Respondent did not appear and was not represented.

At the conclusion of the hearing the Tribunal ordered that the Respondent Andrew John Tempest of Rough Close, Longton, Stoke-on-Trent, 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 £2,937.50. The Tribunal further ordered that the direction of the Office for the Supervision of Solicitors dated 30th July 2001 that the Respondent Andrew John Tempest of Rough Close, Longton, Stoke-on-Trent, Solicitor do pay the sum of £2,500 by way of compensation for inadequate professional services be treated for the purposes of enforcement as if it were contained in an Order by the High Court.

The facts are set out in paragraphs 1 to 19 hereunder: -

1. The Respondent born in 1956 was admitted a solicitor in 1982 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised as a solicitor on his own account under the style of Tempest at 317A Hartshill Road, Hartshill, Stoke-on-Trent, ST4 7NR or as an associate solicitor with Messrs Rees Jones Huntbach & Phoenix, Solicitors of 6-10 Bagnall Street, Hanley, Stoke-on-Trent, ST1 3AQ.
3. The Respondent was not currently in practice.
4. The Respondent acted for PW in matrimonial proceedings. The relevant period of retainer was 8th November 1995 to 21st May 1998.
5. During the course of that retainer and on several separate occasions the Respondent told PW the following:-
 - a. That he had written letters to PW's husband;
 - b. That certain papers would be put in the post to PW that day;
 - c. That PW's Decree Nisi would be pronounced on 18th December 1997 with a Decree Absolute in January 1998;
 - d. That he had attended to the transfer of the former matrimonial home into the sole name of PW.
6. Such statements were untrue.
7. PW complained to the OSS who put the matter formally to the Respondent. A copy of the Respondent's reply dated 13th January 2001 in which he made an admission was before the Tribunal.
8. The matter was initially considered by an Adjudicator who on 30th July 2001 directed that the Respondent pay compensation to PW of £2,500.

9. The Respondent was notified of the compensation order by an OSS letter dated 6th August 2001. He did not appeal. He had not paid the ordered compensation to PW.
10. In the course of the investigation of PW's complaint by the OSS, the Respondent's file in relation to PW was examined. Between the dates of the retainer the only documents on file were:-
 - a. An unsigned Reconciliation Certificate;
 - b. An unissued Divorce Petition.
11. A Miss AR had agreed to purchase the leasehold flat which she then occupied pursuant to a Local Authority right to buy scheme.
12. AR instructed the Respondent to conduct the conveyancing on her behalf.
13. In late October 2001 the Respondent submitted to AR a fee note and completion statement. AR paid the sum of £447.47 required to complete to the Respondent's firm.
14. The Respondent did not inform AR that the completion had not in fact taken place.
15. AR stopped paying rent. In December 2001 to AR's complete surprise, she received a formal demand for rent arrears from Newcastle-under-Lyme Housing Limited.
16. AR complained to the OSS on 9th March 2002.
17. The OSS investigated the complaint on the basis of potential inadequate professional services by the Respondent's firm and also from the point of view of potential misconduct by the Respondent.
18. The Respondent had never given any explanation in relation to this complaint. He failed to reply to letters from the OSS as follows:-

30th April 2002
29th May 2002
25th June 2002
11th July 2002
19. The purchase was actually completed in March 2002. The actual lease was dated 25th March 2002.

The Submissions of the Applicant

20. A copy of the Respondent's letter of 19th September 2002 was before the Tribunal. He had written that he did not intend to defend the proceedings but, for the avoidance of doubt, the Applicant would not treat the matter as an admitted matter. The Respondent had given his consent to the abridgement of time for the service of the supplementary statement.

21. In relation to PW, the Tribunal was asked to note the letter of complaint from PW in which she said that the Respondent had told her that he had written to her husband. She had further written:-

“He told me my Decree Nisi would be on 18th December 1997 and my divorce would be final on 10th January 1998.”

22. PW had also written that the Respondent had told her on 1st May 1998 that certain papers would be put in the post on the 1st May or shortly thereafter.

23. None of the above was true.

24. In a further letter to the OSS, PW had written:-

“But I rang him to ask about him, about the house in my name, only which he told me that he had dealt with the matter for me. But my new solicitor informs me that he has done nothing about it.”

25. In that letter PW had made clear the effect the Respondent’s conduct had had on her.

26. It was submitted that the Respondent had pursued a dishonest course of conduct. He had lied to his client about what he had done, when he had not done it ,and about what he would do, which he then did not do.

27. In relation to AR, the Respondent had accepted that he had not specifically told her that completion had not gone through. The Applicant did not put this matter as one of dishonesty.

28. No criticism was made of Messrs Rees Jones Huntbach & Phoenix by whom the Respondent was employed at the time of the matter of AR. The firm had co-operated fully and had paid compensation to AR.

29. The Respondent was guilty of very serious examples of conduct unbecoming a solicitor. The matter of PW was at the very top end of the scale and in the submission of the Applicant it showed dishonesty by the Respondent.

The Submissions of the Respondent

30. The submissions of the Respondent were contained in his letter dated 19th September 2002 to the Tribunal in which he wrote:-

“Would you kindly note that I do not intend to defend the proceedings.

Dealing with the complaint by AR in the first instance, I would have no objection to Mr Williams’ application (should he so make one) for an abridgement of time in relation to her statement. Whilst I am not defending my actions in this matter, I advised AR on more than one occasion that I thought the matter would complete on certain dates only to find out that it did not. For my part, I was ready to complete on the due dates but regrettably Newcastle-under-Lyme borough Council from who she was buying her

council flat returned the Lease for amendment without specifically stating what amendments were required. Regrettably the mortgage monies from Halifax PLC were drawn down as a result of which she was charged interest from the date of drawdown. As the matter did not complete on the due dates, rent was also being charged which my then employers discharged to avoid any loss on her part.

In relation to the complaint by PW, I am unable to defend my actions and admit that I misled PW as to the progress of her divorce proceedings for which I have apologised to her in person. The divorce petition was not issued because the whereabouts of her husband were not initially known and it was thought that he subsequently removed to Canada. I was ordered to pay compensation to PW in the sum of £2,500.00. This was not paid because I had insufficient funds to pay the same rather than a desire not to pay. Were I able to pay it, I would have paid it.

Regrettably the situation remains the same financially, if not even worse. So much so, that I have recently consulted an insolvency practitioner with a view to entering into a Individual Voluntary Arrangement, or if not accepted by my creditors, petitioning for my own bankruptcy. You may be aware that I left my previous employment in July of this year as a matter of principle and in fairness to that firm and have fortunately managed to obtain another position outside of the law. I would advise that I have NO intention of practising again (even if permitted to) and would therefore invite the Tribunal to make whatever order they consider fit bearing in mind that a severe financial penalty would inevitably replace me in an impossible situation.

I understand that the Tribunal have the power to suspend me indefinitely and place restrictions on any future practising certificates. Bearing in mind that I do not intend to practise again, I would invite the Tribunal to consider such an option should they so desire.

I do not intend to be present at the hearing and apologise in advance for my absence. Having recently started new employment, time off would be frowned upon and the cost of travelling to London or employing a representative on my behalf would be prohibitive and could not be justified. My absence is not intended as a slight to the Tribunal.

I would however wish to apologise for the disrepute I have brought on to the profession, hence my decision to leave the profession voluntarily in advance of the hearing”.

The Findings of the Tribunal

31. Having considered the documentation and the submissions, the Tribunal found the allegations to have been proved.

Previous appearance before the Tribunal on 24th June 1997

32. At a hearing on 24th June 1997 the Respondent had been found guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:-

- (a) unreasonably delayed in the conduct of professional business;
 - (b) failed to reply to correspondence from the Solicitors Complaints Bureau.
 - (c) failed to reply to correspondence from or on behalf of clients.
33. The Tribunal in 1997 referred to the serious way in which it regarded a solicitor's failure to respond to letters addressed to him. To fail to respond to clients or others caused anxiety, frustration and expense and severely damaged the good reputation of the solicitors' profession. The Tribunal was well-known for taking an even more serious view of a solicitor who failed to respond to correspondence addressed to him by his own professional body. That diminished the reputation of the professional body in the eyes of the public, prevented it from fulfilling its role of policing the profession and caused enormous inconvenience and expense which was passed on to his fellow solicitors.
34. The Tribunal in 1997 were able to find that the Respondent had not been guilty of dishonesty and considered that a financial sanction would be appropriate in the circumstances.
35. The Tribunal expressed considerable concern that the imposition of a financial penalty would serve to mark the seriousness with which the Tribunal regarded the Respondent's behaviour and penalise him for it, but would do nothing to assist the Respondent in ensuring that similar circumstances did not again arise in the future.
36. The Tribunal recognised that the "frightened rabbit syndrome" or paralysis preventing the Respondent from dealing with a crucial matter were conditions from which it was more difficult for a sole practitioner to escape than it was for a solicitor practising in partnership. They hoped the Respondent would himself put in place a system, to assist him in the future, for avoiding the consequences of such "paralysis".
37. The Tribunal hoped that the Law Society might assist the Respondent by recognising a mechanism put in place by the Respondent which would prevent him from dealing alone with letters addressed to him by the professional body. No doubt the Respondent would be able to take steps to recruit the appropriate help. The Tribunal did not wish to create the mechanism for him, but suggested that he might make an arrangement with his professional body and an officer of his local Law Society or a fellow local practitioner that in future any letters addressed to him by his professional body should immediately trigger the despatch of a copy of that letter to the appointed person.
38. The Tribunal imposed a fine of £3,500 plus costs.
39. The Tribunal did consider the imposition of a period of suspension upon the Respondent and wished to make it plain that should he appear before the Tribunal again and have allegations of a similar nature substantiated against him, it would be very unlikely that any future Tribunal would feel able to deal with him so leniently.
40. At the hearing on 24th September 2002 the Tribunal considered that in the matter of AR, the failure to inform her that the completion had not taken place had caused her serious difficulties and her letter to the OSS of 9th March 2002 made clear the damage

done to the reputation of the profession by the Respondent's conduct. The Respondent had also failed to reply to correspondence from the OSS with regard to AR. The Tribunal regarded any failure by a solicitor to co-operate with the regulatory body as very serious.

41. The most serious allegation which had been found proved against the Respondent however involved the matter of PW. It was clear that the Respondent had followed a dishonest course of conduct in relation to PW's matrimonial matter which had caused her great distress and which, again, had damaged the reputation of the profession. The Tribunal had a duty to protect the public from solicitors who behaved as the Respondent had done. His conduct towards his clients had been totally unacceptable for a solicitor and indeed in the case of PW had been dishonest.
42. The Respondent could no longer be allowed to be a member of the profession. The Tribunal ordered that the Respondent Andrew John Tempest of Rough Close, Longton, Stoke-on-Trent, 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 £2,937.50. The Tribunal further ordered that the direction of the Office for the Supervision of Solicitors dated 30th July 2001 that the Respondent Andrew John Tempest of Rough Close, Longton, Stoke-on-Trent, Solicitor do pay the sum of £2,500 by way of compensation for inadequate professional services be treated for the purposes of enforcement as if it were contained in an Order by the High Court.

DATED this 4th day of November 2002
on behalf of the Tribunal

W.M. Hartley
Chairman