

IN THE MATTER OF RAJAN RADIA, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. A H B Holmes (in the chair)  
Mr. S N Jones  
Mr. M C Baughan

Date of Hearing: 8th August 2002

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Iain George Miller solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 26<sup>th</sup> March 2002 that Rajan Radia of Egham, Surrey (a 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in that:

1. in answer to allegations made by his client, Mr R, that he had not properly advised on procedural and other matters raised by Mr R in his letters of 10<sup>th</sup> March 1999 and/or 7<sup>th</sup> August 1999 the Respondent fabricated a letter purported to be dated 20<sup>th</sup> October 1997 and represented to Mr R that this letter had been sent to him on or about 20<sup>th</sup> October 1997;

2. in answer to an allegation made by his client, Mr R, in a letter dated 7<sup>th</sup> August 1999 that he had failed to advise on the possibility of settling an action, the Respondent added the following to an attendance note dated 20<sup>th</sup> October 1997:-

“call to client re above. Client confirms that needs to fight case because there are many others out there awaiting decision on this one- could be liable for a fortune. Therefore cannot consider payment into court. Advised likely £1,200 - £1,500 plus VAT plus disbursements in each case. Costs implications: wanted me to claim costs from other side. Said couldn't do that and would send terms of business letter to him”

and represented to Mr R that this was an accurate record of their conversation on 20<sup>th</sup> October 1997;

3. in answer to a point made by Mr R in his letter to the OSS dated 14<sup>th</sup> November 2000 that the fabricated letter dated 20<sup>th</sup> October 1997 contained a form of address that was universally different to other letters sent at the same time the Respondent added to an undated attendance note (originally created in 1997), Mr R's name and address in a form that was consistent with the form used in the fabricated letter dated 20<sup>th</sup> October 1997;
4. the Respondent represented to the OSS during an investigation by them that the fabricated or amended documents referred to in allegations 1 to 3 above were genuine.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8<sup>th</sup> August 2002 when Iain George Miller appeared as the Applicant and the Respondent was represented by Jerome Wilcox of Counsel.

The evidence before the Tribunal included the admissions of the Respondent and the oral evidence of Christopher Cooney, Michael Courtney and the Respondent.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal ORDER that the Respondent, RAJAN RADIA of Egham, Surrey, solicitor, be STRUCK OFF the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,650.00 inclusive.

The facts are set out in paragraphs 1 to 14 hereunder:-

1. The Respondent, born in 1969, was admitted as a solicitor in 1995.
2. The client, Mr R, had instructed the Respondent in relation to various commercial disputes in late 1997. At that time the Respondent was employed by Francis & Francis. The Respondent left that firm in March 1998 to take up employment with Campbell Courtney & Cooney (CCC). Mr R then instructed the Respondent at CCC.
3. The solicitor and client relationship between the Respondent and Mr R subsequently broke down.

3. On 10<sup>th</sup> March 1999, Mr R wrote to the Respondent raising certain matters of concern. In his reply of 12<sup>th</sup> March 1999 the Respondent referred Mr R to his letter of 21<sup>st</sup> October 1997 in answer to the allegations (the correct date of the letter referred to was 20<sup>th</sup> October 1997). That was the first reference to the letter which had been fabricated by the Respondent. It was in the following form:-

“I write to confirm that I should be pleased to act for you in your defence of a claim brought by T Supplies Ltd. I will shortly put this firm on the record. I have spoken to Miss F at Shoosmith and Harrison solicitors to confirm that no judgement has yet been entered and I have agreed an extension of time for service of such defence for fourteen days which will be the 3<sup>rd</sup> November 1997. In any event I have drafted a rough defence and further to our conversation today you have approved its contents and I shall send it now to the plaintiff's solicitor and to the court.

I would like to advise of the likely steps involved in this matter and detail the terms and conditions of this practice.

Once the defence has been served the next step in the action is to ensure that the case is in the correct court. I suggest that the county court is the correct court for this action because of the value of the matter. The county court will issue a set of automatic directions which the parties must follow. Those directions will be as follows;

#### DISCOVERY OF DOCUMENTS

The purpose of discovery is to establish the contents of the documents that will be used in the action. It is important to ensure that relevant documents are not destroyed or concealed. The discovery requires full discovery to be made of documents harmful to the parties own position as long as they pass the test of relevance. Discovery will take place in the form of exchanging a formal list of documents at a relatively early stage although there is a continuing obligation to give discovery so that if other documents come into existence into a parties possession custody or power after the service of the list there is a continuing obligation to discover these further documents however late they come into existence even at the time of the trial itself. The meaning of document is not restricted to paper but extends to anything which is relevant as evidence or anything which is evidence or upon which information is recorded e.g. Tape recordings, video films and computer disc.

Relevance encompasses not only the subject matter of the action but questions in both the action and the counter claim although there is no counter claim here. Thus documents which contain information which may enable either party to advance his own case or to damage that of the opponent and documents which may fairly lead him to a trail of enquiry must disclosed. If you are in any doubt about as to whether a particular document is relevant I will of course advise you accordingly. With this in mind I should be grateful if you send to me copies of all documents that pass this test. I will then prepare a list of documents in a proscribed form. I will take into account the any documents I have in my file already. Please note that any document for which privilege is claimed for example letters between yourself and myself

must still be disclosed but on a separate list and the grounds of privilege stated. Once a list has been served the party is allowed to inspect the documents and to take copies.

#### WITNESS STATEMENT

Once in the County Court the automatic directions order will provide for exchange witness statements of the oral evidence which each party intends to plead on any issue or fact at the trial. The rules provide that where a party fails to comply with this direction that a party is not entitled to use evidence from his intended witness without leave of the court. The courts have taken a tough stance on this point where they only allow a witness who has not provided a statement to give evidence where there is very good reason for the statement not having been provided earlier.

The statements must encompass all the evidence which the witness can reasonably be expected to give at trial i.e. the material facts which he is able to provide from his own knowledge. The witness statement should therefore be the equivalent of all evidence which he has given as evidence in chief at the trial. No inadmissible evidence must be contained in the statement. The statement must be full and complete not an outline or sketch. The statement should also be in the witnesses own language rather than being drafted in a formal manner. After disclosure of the statement the witness is still called at the trial and normal procedure is that he will swear on oath as to the truth of his witness statement. Further evidence may not be tendered unless leave is given or a further or amended statement has been served. The witness will then be open to cross examination on the statement exchanged.

Statements are exchanged simultaneously and on agreed dates.

With this in mind I should be grateful if you would let me know if there are any witnesses other than yourself whom I may approach with a view to my obtaining from them a full witness statement. If they do not wish to attend my offices then such witness statement may be taken over the phone by myself and sent to them through the postal system for signature.

#### EXPERT WITNESSES

I would have discussed with you already if any expert witnesses would be required in this matter. Here in this debt collecting matter I can not foresee at this time that any expert report will be required although should this change I will let you know. It may be that Counsel has its own views of this. Should you believe that an expert witness would assist your case I would be happy to discuss this with you.

#### SETTING DOWN FOR TRIAL

Once discovery has taken place and witness statements exchanged the plaintiff will ask the court for a trial date.

#### TRIAL BUNDLES

After the trial date has been fixed the plaintiff must prepare a paginated and

indexed trial bundle. If the defendant, (yourself) wishes any other documents to be included in the bundle the onus is on yourself to inform the plaintiff accordingly and I will do this for you. Usually the trial bundle will be agreed between the solicitors acting for the respective party. A copy of the trial bundle is then filed with the court at least seven days before the trial date.

### COUNSEL

Although solicitors do have rights of audience in open court it is usual to instruct Counsel, a barrister to appear at the trial of this matter and any complex interlocutory hearing. The difference between a barrister and a solicitor can be likened to that of a surgeon and a general practitioner. Counsel specialises in the settling of pleadings providing advice on complex points of law and conducts trial. In addition to the obvious expertise that Counsel will provide he will be paid a brief fee which is a fee agreed with his clerk before the trial whereas solicitors are paid on a timed basis. Counsel will only be increasing his fee where a trial overruns its allocated time. I understand that you are pleased with Counsel previously used and you are happy to continue using this Counsel.

### OUR COSTS

As I have explained to you earlier, I am a solicitor in this practice and I shall be dealing with your case personally. My hourly rate is £100 which is subject to review annually although I will provide you with written notice of this. Other less senior members of staff may charge a lower hourly rate. In addition to this letter out are charged at 1/10<sup>th</sup> of the hourly rate and letters in at 1/20<sup>th</sup> and calls at 1/10<sup>th</sup> of the hourly rate. There may be reduced fee for any travel. My charges are calculated by reference to the time spent dealing with this matter.

### ORDERS FOR COSTS

If you win the general rule is that a successful litigant in civil proceedings will recover an order for costs against his opponent. Unless agreed those costs will be taxed at a separate hearing after the trial. Taxation is a process whereby an officer of the court examines the file and compares this with a detailed bill of costs presented. He will then determine how much the losing party must pay to the winning party after hearing any objection. As general rule all reasonable legal costs can be recovered and previous experience shows that I am able to obtain 70-85% of legal costs. This does not effect the amount payable to this firm for work carried out on your behalf. You should of course be aware that having obtained an order for costs against the defendant the defendant may not be able to pay.

If you lose you will very likely be ordered to pay your opponents costs and as there is more work involved in the plaintiff's side than the defendants they may be more than your own costs.

### PAYING ON ACCOUNT

It is normal practice when acting in contested litigation to ask clients to make

payments on account of anticipated costs and disbursements and they will have spoken to you with regard to how much they now require. Additionally I will deliver bills to you at appropriate times.

I apologise for writing to you at such length however I have tried to provide you with as much detail as possible. If you require any further clarification please don't hesitate to contact me.

With regard to the claim itself having received your approval of the defence over the telephone I shall now draft it and lodge it with the court and with the other side. I will also lodge Notice of Acting.

If there is any news I shall let you know.

Yours sincerely,  
Rajan Radia”

5. The reality was that this letter had been drafted by the Respondent in 1999 – it had not been written to Mr R in 1997.
6. On 7<sup>th</sup> August 1999, Mr R wrote to CCC expressing dissatisfaction with various aspects of the way in which his case had been dealt with and threatened negligence proceedings. CCC replied to that letter on 25<sup>th</sup> August 1999. That reply referred to an attendance note dated 20<sup>th</sup> October 1997 and sets out what purported to be a passage from it in answer to the allegation that the Respondent failed to advise on settlement at an early stage of the matter. The attendance note was in the following form:

“20 Oct’ 97

Call from Mr Yowler who confirmed Judgement not yet entered

Agreed to 14 day ext to file full defence by 3<sup>rd</sup> Nov. 97’

*Call to client re above. Client confirms that needs to fight case because there are many others out there awaiting decision on this one – He could be liable for a fortune. Therefore cannot consider payment into court. Advised likely £1,200 - £1,500 plus VAT plus disbursements in each case. Costs implications: wanted me to claim costs from other side. Said couldn't do that and would send terms of business letter to him”.*

There had been a manuscript attendance note of 20<sup>th</sup> October 1997: the part in italics was that part added in manuscript by the Respondent in 1999.

7. In addition, the 25<sup>th</sup> August 1999 letter placed great reliance on the fabricated letter of 20<sup>th</sup> October which purported to be from Francis and Francis to Mr R. That letter had been erroneously referred to in the 25<sup>th</sup> August 1999 letter as being dated “7.10.97” and “7<sup>th</sup> October 1997”.
8. Mr R denied receipt of the 20<sup>th</sup> October 1997 letter or knowledge of the alleged 20<sup>th</sup> October 1997 telephone conversation. An investigation revealed that the letter dated 20<sup>th</sup> October 1997 could not have been written on that date. The letterhead had been different from that used in contemporaneous correspondence. The list of partners and consultants was incorrect. The form of address of Mr R did not match that used in 1997.

9. Mr R complained to the OSS. The OSS sought the Respondent's explanation. The Respondent in reply (dated 17<sup>th</sup> January 2001) sought to demonstrate that the fabricated letter and amended attendance notes were genuine.
10. The Respondent explained that he had purchased his own typewriter with a word processor facility and data storage facility on disk. He had used this on a regular basis at Francis & Francis. As well as using that equipment for mortgage repossession cases he also used that word processor for long standard letters which for example would be useful on another occasion. There had been a number of office moves while the Respondent was at Francis & Francis and he said that each time there was a change of partnership, fee earner or location new letterhead paper would be ordered and used as appropriate. Old letterhead would then be used as scrap paper for timesheets, file notes and so on.
11. The representations made by the Respondent sought also to discredit Mr R. He said that Mr R had withheld information and documents detrimental to his defence. He said in a statement of truth dated 12<sup>th</sup> January 1999 "Mr R had said that he retained full control and sole authority to incur expenditure (in his business) until the date of transfer on 1<sup>st</sup> March 1997. After that he played no part in the business." At a conference with Counsel on a date after 22<sup>nd</sup> February 1999 Mr R had said that he was still the sole signatory on the business bank account. In a letter dated 21<sup>st</sup> August 1997 Mr R said "I have retaken control of (the business) in an attempt to continue the business and repay monies owing. However I am doing this solely on the basis that debts incurred by S are S's personal debts and not mine." At a conference with Counsel on 4<sup>th</sup> March 1999 the Respondent said it became apparent that a large amount of documents (3 boxes full) relating to the company business were in Mr R's possession and had not been shown to the Respondent, Counsel or the other side. The trial had been listed for 17<sup>th</sup> March 1999. Counsel had urged Mr R at conference to provide all documents relating to the business as soon as possible so that a supplementary list could be provided. Mr R had been pressed to deal with this on 12<sup>th</sup> March 1999 and a few documents had been provided on or about 14<sup>th</sup> March 1999. The balance of documents were chased on 15<sup>th</sup> March by letter. The balance of the documents had never been handed over to the Respondent, Counsel or the court. The Respondent believed that Mr R did not want the documents to come to light in case something in them weakened his defence.
12. The Respondent pointed out that Mr R had at first alleged that he had not seen the letter of 20<sup>th</sup> October 1997 in a letter of 17<sup>th</sup> December 1999 some 3 ½ months after he had been sent a copy and his first allegation that the letter had been fabricated was contained in his application form to the OSS dated 13<sup>th</sup> October 2000, some fourteen months later. The Respondent went into some detail as to how the standard form of letter said to have been sent to Mr R dated 20<sup>th</sup> October 1997 came to be on his word processor and had been utilised as a precedent in this case.
13. He also provided a copy of what he described as "the original hand written telephone attendance note dated 20<sup>th</sup> October 1997" confirming his conversation with the other side's solicitors. In the event, Mr R went to a great deal of trouble to establish that the type of word processor which the Respondent said he had used could not have

produced that letter. The Respondent denied what he described as “the malicious allegation” that he used Francis & Francis letterhead after he had left that firm.

14. The representations of the Respondent were very lengthy but not only did he seek to give a detailed and complex explanation to the OSS, a number of representations made by the Respondent also sought to discredit Mr R. Mr R had gone to the trouble of obtaining extensive forensic evidence in order to demonstrate the true position in the face of the Respondent’s denials.

### **The Submissions of the Applicant**

15. The Respondent when confronted with his wrongdoing had tried to explain the inexplicable. Not only had he offered lengthy but untrue explanation, he had attacked his former client, Mr R, and Mr R’s credibility. He had alleged, for example, that Mr R suppressed documents in the cases in which the Respondent had been instructed.
16. The Respondent had not simply flatly denied the allegations made against him but he had made allegations against the complainant. Not only had the Respondent fabricated two documents but he had then later relied upon them when responding to an enquiry made of him by his own professional body. He had written to the OSS on the basis that the documents upon which he relied were genuine, that had been done in a statement of truth made by the Respondent. The Respondent had fabricated a letter which he said he had sent to his client some two years prior to the investigation and he had fabricated an attendance note by adding words which would assist his own position at a date very much later than that upon which the original attendance note had been made.
17. Mr R’s claim had been settled and he withdrew his complaint to the OSS. The withdrawal of Mr R’s complaint had no material effect upon the disciplinary matter as the OSS continued to bring disciplinary proceedings against the Respondent.
18. There had been a period of time during which the Respondent continued to deny the allegations despite overwhelming evidence to demonstrate the accuracy of what had been alleged against him.
19. It was at a later date that the Respondent confessed the true situation to a partner in his employer firm, Mr Cooney, following which CCC had written to the OSS on 25<sup>th</sup> June 2001 confirming that the Respondent had admitted the forgery of a letter and a telephone attendance note following a casual request made by Mr Cooney to Mr Radia about his welfare at the end of February 2001. The matter had been reported immediately to SIF but it was only in June 2001 that Mr Cooney and Mr Courtney recognised their responsibility to make the matter known to the OSS.
20. In summary, the Respondent had fabricated two documents either wholly or partially. He had relied on them to defend himself against complaint from a client. When the matter was reported to the OSS the Respondent lied to that body in a statement of truth made by him. In defending himself the Respondent also attacked the probity and motivation of his client, Mr R. The Respondent persisted in his adoption of the untrue position through extensive correspondence, at first with his client and subsequently with the OSS.



21. In the submission of the Applicant it was clear that the Respondent had acted with conscious impropriety. The Applicant put the matter before the Tribunal as one involving an allegation of dishonesty against the Respondent. The conduct complained of was at the serious end of the scale.

### **The Submissions of the Respondent**

22. The Respondent admitted the allegations. He was not a dishonest person he was a good and hardworking solicitor.
23. The Respondent had been deeply upset and concerned at what had happened he was extremely contrite and in oral evidence before the Tribunal apologised to Mr R, the OSS, his professional colleagues and the Tribunal for his behaviour. Such behaviour had been out of character and aberrational.
24. The Respondent was supported by his employers who were partners in a firm of solicitors. They both spoke highly of the Respondent's character and ability. He was a popular and successful member of their firm. As mark of the esteem in which they held the Respondent, they had continued to employ him after the alleged matters had come to light. The Tribunal was invited to give due weight to the number of written testimonials attesting to the Respondent's ability and good character.
25. The Respondent had already suffered financially to a considerable degree. He had paid the excess payment after Mr R's negligence insurance claim had been settled, he had settled Mr R's unpaid costs which were outstanding to his firm, the Respondent had engaged a firm of solicitors to represent him at considerable cost and he had engaged Counsel to represent him at the hearing. Additionally he had agreed to pay the Law Society's costs. As well as the emotional trauma, he had suffered a considerable financial outlay.
26. The Tribunal was referred to previous decisions of the Tribunal where the Tribunal had, even though allegations involving dishonesty had been established, been able to avoid the imposition of the ultimate sanction.

### **The Findings of the Tribunal**

27. The Tribunal was invited to consider the psychiatric reports placed before it. The Tribunal has carefully noted all that was said in those reports but does not set out the detail here.
28. Further the Tribunal was given a great deal of information about the Respondent's difficult family history which undoubtedly caused him a great deal of stress, as had extreme pressures of work and other problems and/or events in his personal life. The Tribunal recognises that all such factors can and often do have a cumulative effect.
29. The Tribunal has given the Respondent credit for eventually making a clean breast of things with his employers, his wife and his professional regulatory body. They accept that he deeply regrets what he has done and is clearly very embarrassed, ashamed and contrite.

30. The Tribunal recognises that the Respondent is a young man and the behaviour about which complaint is made occurred when he was young and relatively inexperienced as a solicitor. The Tribunal also accepts that he was suffering from considerable emotional turmoil at the time and recognise that perhaps he was less able to cope with such turmoil because of his unusually difficult childhood experiences. The Tribunal has taken into account the support offered to the Respondent by his employers and professional colleagues and others.
31. It is well known that any solicitor appearing before the Tribunal having an allegation involving dishonesty substantiated against him must expect the imposition upon him of the ultimate sanction. The Tribunal would feel itself able to impose a lesser sanction in the face of such proved misconduct only if the misconduct had taken place in the light of exceptional circumstances.
32. The Tribunal has given careful consideration to the surrounding circumstances. It accepts that the Respondent fabricated the letter which was purported to be dated 20<sup>th</sup> October 1997 in a moment of madness. The Tribunal has then to deal with the fact that the Respondent added words to an attendance note and both of these documents were used by the Respondent to counter a complaint made by Mr R in August 1999.
33. It was in answer to a requirement of the OSS that the Respondent give explanation that some fifteen months later he sought to deny the spurious nature of those documents and fabricated a complicated explanation running to some eighteen closely typed pages. The Respondent's explanations had subsequently been proved to be untrue.
34. The Tribunal found itself unable to conclude that the initial fabrication of documents had been an isolated aberrational event. The Respondent had perpetuated the lie at a later date when clearly he had the opportunity to give the matter a great deal of thought. Not only does the Respondent's reply to the OSS cause the Tribunal to discount the possibility that his emotional state in 1999 had led to his aberrational behaviour but the Tribunal had taken into account, and regard with the utmost seriousness, the fact that in addition to his denials and false explanations the Respondent had sought to discredit his erstwhile client.
35. Whilst one of the factors to be borne in the mind of the Tribunal is the position of the individual solicitor appearing before it, it has also to keep at the forefront of its mind its fundamental duty to protect the interests of the public and to protect the good reputation of the solicitor's profession. The Tribunal has asked itself what the perception of the public would be of a profession who permits one of its members who has behaved as the Respondent has behaved to remain one of its practising members. Whilst the Tribunal has a great deal of sympathy for the Respondent, it concludes that to allow him to remain on the Roll of Solicitors could not be in the interests of the public and would serve seriously to tarnish the good reputation of the solicitors' profession.
36. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry in the fixed sum which had been agreed between the parties.

DATED this 17<sup>th</sup> day of October 2002

on behalf of the Tribunal

A H B Holmes  
Chairman