

IN THE MATTER OF SIMON JAMES SPENCER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr S N Jones (in the chair)  
Mr R J C Potter  
Ms A Arya

Date of Hearing: 8th October 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 Geoffrey Williams solicitor of 2a Churchill Way, Cardiff, CF10 2DW on 12<sup>th</sup> June 2002 that Simon James Spencer solicitor of Southdene, Kirkby, Merseyside (now of Shirley, Solihull, West Midlands) 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 allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following respects:-

- (a) that he created or caused to be created documents which were false and misleading;
- (b) that he tendered to a client documents which he knew or ought to have known were false and misleading;
- (c) that he gave misleading information to his employer;
- (d) that he misled the Court;
- (e) that he misled a client;
- (f) that he failed adequately to supervise staff. [withdrawn with the consent of the Tribunal].

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff, CF10 2DW 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 Simon James Spencer of Shirley, Solihull, West Midlands (formerly of Southdene, Kirkby, Merseyside) 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 £3,519.13.

The facts are set out in paragraphs 1 to 32 hereunder: -

1. The Respondent born in 1966 was admitted as a solicitor in 1990 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent practised as a solicitor and associate partner of Messrs Gateley Wareing (GW) solicitors of Windsor House, 3 Temple Row, Birmingham, B2 5JR. The Respondent joined the firm on or about 18<sup>th</sup> March 1997 and resigned on or about 18<sup>th</sup> November 1999.
3. The Respondent acted for Mr I, the claimant in civil proceedings against H Ltd. H Ltd instructed Messrs Cox Cooper solicitors.
4. Proceedings were issued and subsequently transferred to the Staines County Court.
5. The claim was subsequently struck out. Cox Cooper enquired of the Respondent on 3<sup>rd</sup> February 1999 as to whether there would be any fresh action. The Respondent replied in the affirmative.
6. On 26<sup>th</sup> June 1999 the Respondent wrote to Mr I enclosing the draft text of a claim form for Mr I's approval.
7. On 30<sup>th</sup> June 1999 Mr I wrote to the Respondent returning the signed claim. He also wrote:-
 

"I was disappointed not to be at the hearing which was scheduled for Wednesday June 23<sup>rd</sup> 1999 which has been moved forward to Friday June 18<sup>th</sup> 1999, which I was not aware of."
8. On 2<sup>nd</sup> July 1999 the Respondent wrote to Cox Cooper saying that:-
 

"You should also be aware that fresh proceedings are ready for service."
9. On 5<sup>th</sup> July 1999 fresh proceedings were issued and were served on H Ltd on 9<sup>th</sup> July 1999.
10. On 20<sup>th</sup> July 1999 a meeting took place between Mr I, the Respondent and the Senior Partner of Messrs GW, Mr M.
11. An attendance note of the meeting said that Mr M:-

".... set out the up-to-date procedural position with the action and confirmed that the new action is up and running. I [the client] was provided with a copy set of the relevant pleadings etc. It was agreed that SJS [the Respondent] will write to the Court asking for an explanation of their recent activities."

12. On 21<sup>st</sup> July 1999 the Respondent wrote to Mr I:-

"It is alright, you can get back on to your chair now... it is indeed a letter from me and indeed, one as per my promise!

I enclose a copy of my note of our meeting of yesterday for your file..."

13. The "copy set of the relevant pleadings" which had been given to the Respondent at the meeting on 20<sup>th</sup> July comprised a claim form purportedly issued on 5<sup>th</sup> May 1999, a defence purportedly signed by Messrs Cox Cooper on 19<sup>th</sup> May 1999 and an Order of the Court purportedly made by "District Judge Sehdev" on 18<sup>th</sup> June 1999.

14. On 29<sup>th</sup> July 1999 Mr M wrote to the Birmingham County Court with regard to confusion which had arisen. In that letter Mr M wrote:-

"We have essentially a confidence issue with our client who does not believe we are processing this claim on his behalf or that the matter is progressing along the lines set out in the Order made by District Judge Sehdev."

15. Meanwhile Mr I had made his own enquiries of the Court.

16. He telephoned the Court on 2<sup>nd</sup> July 1999 to enquire as to the progress in his case. No record of the proceedings existed.

17. Mr I wrote to the Court on 5<sup>th</sup> July 1999 (erroneously dated 5<sup>th</sup> June 1999). In that letter he wrote:-

"I have been informed by my solicitor, that a case had been filed at the beginning of the year, and a provisional hearing had been set for Wednesday June 23, 1999, but has been moved forward to Friday June 18 1999. Where our solicitor Mr Simon Spencer from Gateley Wareing Solicitors, has attended and the defendants' solicitor, Cox Cooper has attended.

I was quite surprised that there was no record of this case."

18. On 10<sup>th</sup> August 1999 Mr I further wrote to the Court as follows:-

"With reference to the General Form of Judgment or Order which we have received from our solicitors, I have been to your Court on Friday July 23, 1999, where I had a discussion with Miss S and a number of your Officers in the Court which they have informed me that they have no record of this judgment or document.

My solicitor has informed me that this claim has been filed on May 5, 1999. The Court records show differently.

On my visit to your Court, Miss S has contacted the defendant's solicitor, who confirmed that he has not attended the Court on that day (June 18, 1999), and he is not aware of that Order.

I have requested from Gateley Wareing an explanation of that and as of yet to receive it.

I would be very grateful if you can once and for all tell me the truth about this situation."

19. Consequent upon that letter Mr M (who was not criticised in the application before the Tribunal) and the Respondent were required to attend before a District Judge of the Birmingham County Court on 30<sup>th</sup> September 1999.
20. The issues to be considered at that hearing were as follows.
21. At the meeting on 20<sup>th</sup> July 1999 the Respondent had given to Mr I a document purporting to be his claim form bearing an issue date of 5<sup>th</sup> May 1999. This document was false. The claim was actually issued on 5<sup>th</sup> July 1999.
22. The Respondent had given to Mr I a document purporting to be a defence filed by Messrs Cox Cooper on 19<sup>th</sup> May 1999. This document was also false. At its purported date no proceedings had been issued.
23. The Respondent had given to Mr I a document purporting to be an Order made in the proceedings on 18<sup>th</sup> June 1999 and drawn up on 12<sup>th</sup> July 1999. This document was also false. In particular:-
  - (i) no such hearing took place;
  - (ii) Deputy District Judge Sehdev was erroneously described as a District Judge in the false document. He was not sitting in the Birmingham County Court on 18<sup>th</sup> June 1999.
24. The result of the production of the false documents was that Mr I was misled into believing that a new action had been issued earlier than it had been and that it was more advanced than was actually the case.
25. The true chronology of events was provided to the Court by Messrs Cox Cooper on 4<sup>th</sup> October 1999 and was before the Tribunal.
26. The hearing before the learned District Judge Marsh took place on 30<sup>th</sup> September 1999. Copies of the transcript of the hearing and of the Order of the learned District Judge were before the Tribunal.
27. Messrs GW commenced a disciplinary process with respect to the Respondent. However he resigned before the hearing.
28. On 5<sup>th</sup> November 1999 Mr M wrote to District Judge Marsh.

29. In that letter Mr M wrote:-

"It is right to tell you that during the course of our investigation into this matter, we formed the view that on balance the documents concerned had been created by Simon and by nobody else. Quite why Simon embarked upon such a course of action in an endeavour to cover what was a question of a delay of two months or so in actioning the client's instructions I have never been able to fully understand. I can only assume that with the particular case history of this matter Simon felt under increasing pressure. I believe what happened was that Simon prepared the proceedings in May, arranged for them to be issued and assumed that had been done. He was in reasonably regular contact with the client and I suspect had told the client that is what had happened. It was only towards the end of June beginning of July that he discovered that the proceedings had not been issued and felt unable to tell the client."

30. Mr M had also said that the Respondent had resigned his position at the firm on 18<sup>th</sup> November 1999 and said that during his time at the firm he had been a very valuable member of the team.

31. District Judge Marsh reported the matter to the OSS on 3<sup>rd</sup> April 2000. The OSS wrote to the Respondent seeking his observations upon the complaint.

32. The Respondent replied by letter dated 3<sup>rd</sup> April 2001. In relation to the allegations of falsification of documents the Respondent wrote:-

"From recollection, I believe it is clear that each document has been falsified to create the impression that proceedings had been issued and moved along at an earlier stage than in fact was the case. However I choose to view this fact, I cannot escape from the reality that this was my file, I had care and conduct of it and I am therefore responsible for whatever shortcomings are evidenced on it. I therefore have no alternative but to accept responsibility for these matters."

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

33. The Applicant sought the consent of the Tribunal not to proceed with allegation (f) which would only have been relevant if evidence had emerged that staff rather than the Respondent were responsible for what had occurred. Consent being given the Applicant proceeded with allegations (a) - (e).

34. The Respondent had been served with the documents by an Enquiry Agent and had submitted the required questionnaire to the Tribunal. In that document he had denied the allegations but said that he did not intend to contest the matter. The Applicant would therefore treat the matter as contested and seek to prove the allegations on the documents.

35. The Tribunal was asked to note the letter of 2<sup>nd</sup> July 1999 from the Respondent to Messrs Cox Cooper. This was an important date as the Respondent was writing that

fresh proceedings were ready for service at a date later than that on the false documents.

36. The Respondent's letter to Mr I of 21<sup>st</sup> July 1999 indicated the pressure that the Respondent felt he was under from the client. The letter of Mr M to the Court dated 29<sup>th</sup> July 1999 also indicated that pressure. In drawing the Tribunal's attention to that the Applicant intended no criticism of Mr I.
37. An analysis of the documents given to Mr I at the meeting on 20<sup>th</sup> July showed that the claim form given to him was dated 5<sup>th</sup> May 1999 whereas the actual proceedings were issued on 5<sup>th</sup> July 1999. The purported defence document of Messrs Cox Cooper also dated May 1999 was false. No defence had been issued because no proceedings had been issued. The true defence was dated 30<sup>th</sup> July 1999. The purported Order of 18<sup>th</sup> June 1999 was also false. It contained two errors relating to Deputy District Judge Sehdev.
38. The Applicant made no criticism of Mr M or the firm of Gateley Wareing.
39. Mr I had clearly been mystified by the response to his own enquiries at the Court. By his letter of 10<sup>th</sup> August 1999 he had become aware that Cox Cooper had not attended the supposed hearing on 18<sup>th</sup> June 1999.
40. The Tribunal was referred to the transcript of the hearing on 30<sup>th</sup> September 1999. At that hearing the Respondent had said:-
 

"It is fair to say that to an unnecessarily large extent, I largely left it in the hands of my secretary who was a very, very, very bright secretary..."

It was submitted that when the Respondent got to the hearing he sought to lay the blame on an unnamed secretary whilst praising her competence.
41. District Judge Marsh had indicated that he was considering referring the matter to the police.
42. In his letter of 3<sup>rd</sup> April 2001 to the OSS the Respondent had not admitted that he wrote the documents but had accepted the responsibility.
43. It was submitted that the Respondent had created the documents. It was his file and he was under pressure from the client. Even if he had not actually created the documents he had handed over false and misleading documents and had dissembled before District Judge Marsh.
44. The Respondent had not given an explanation and had misled his client by giving him false documents.
45. The Respondent had followed a thoroughly dishonest course of conduct. The Applicant did not criticise anyone other than the Respondent against whom the Applicant put the case as a very serious one.

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

46. Having considered the documentation and the submissions of the Applicant the Tribunal found the allegations to have been substantiated. These were very serious allegations including the creation of false documents, misleading a client, the Respondent's employer and the Court. No evidence had been put forward by the Respondent to suggest that anyone other than himself was responsible for what had occurred. The Respondent had written to Cox Cooper on 2<sup>nd</sup> July 1999 saying that proceedings were ready for service. On 20<sup>th</sup> July 1999 he had handed over to Mr I a claim form purporting to have been issued on 5<sup>th</sup> May 1999, a defence purportedly dated 19<sup>th</sup> May 1999 and an Order of the Court purportedly made on 18<sup>th</sup> June 1999. The transcript of the hearing conducted by a District Judge of the Birmingham County Court on 30<sup>th</sup> September 1999 clearly establishes the proceedings in question were not issued until 5<sup>th</sup> July 1999. It follows that none of the documents produced by the Respondent could have been generated in the actual proceedings.
47. It was accepted that the Respondent was under pressure at the time and his employer in his letter to the Court dated 5<sup>th</sup> November 1999 had recorded the Respondent's previous valuable contribution to the firm. This did not excuse the Respondent's conduct however. The Respondent had damaged the reputation of the profession in the eyes of his client and the Court. The Tribunal accepted the Applicant's submission that this had been a thoroughly dishonest course of conduct.
48. The Tribunal ordered that the Respondent Simon James Spencer of Shirley, Solihull, West Midlands, B90 (formerly of Southdene, Kirkby, Merseyside) 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 £3,519.13.

DATED this 26th day of November 2002

on behalf of the Tribunal

S N Jones  
Chairman