

IN THE MATTER OF JOHN STANLEY WAYMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr A Gaynor-Smith
Mrs V Murray-Chandra

Date of Hearing: 25th March 2003

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 Margaret Bromley solicitor of Bush House, 72 Prince Street, Bristol, BS99 7JZ on 24th September 2002 that John Stanley Wayman of Godalming, Surrey, 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:-

- (a) he acted as a solicitor at a time when he did not have a Practising Certificate which was in force.
- (b) he failed to comply with the Solicitors Indemnity Rules 2000.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 25th March 2003 when Margaret Bromley solicitor of TLT Solicitors, Bush House, 72 Prince Street, Bristol, BS99 7JZ appeared as the Applicant and the Respondent was represented by Mr Peter Lewis of Counsel instructed by Messrs Heald Nickinson of 24 Park Street, Camberley, Surrey.

The evidence before the Tribunal included the admissions of the Respondent together with two letters of reference in support of the Respondent handed in at the hearing in addition to the bundle of references handed in previously. The Tribunal heard oral evidence from Dr Mugisha, Consultant Psychiatrist, and Mr K McCubbin.

At the conclusion of the hearing the Tribunal ordered that the Respondent John Stanley Wayman of Godalming, Surrey, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 25th day of March 2003 and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £2,327.73.

The facts are set out in paragraphs 1 to 11 hereunder:-

1. The Respondent, born in 1948, was admitted as a solicitor in 1973. The name of the Respondent remained on the Roll of Solicitors.
2. At all material times the Respondent practised on his own account under the style of John S Wayman at 125a High Street, Godalming, Surrey.
3. The Respondent's Practising Certificate for the practice year 1999/2000 was automatically terminated by The Law Society on 16th January 2001 as the Respondent had failed to return the renewal forms for the practice year 2000/2001.
4. The Respondent's firm remained open until the practice was intervened in November 2001.
5. During the period January to November 2001 the Respondent was practising uncertificated.
6. On 19th July 2001 a case worker from the OSS spoke to the Respondent on the telephone and asked him if he was still practising in view of the fact that his 1999/2000 Practising Certificate was terminated. The Respondent confirmed that he was aware of practising uncertificated. He was warned that this could be a ground for intervention into his practice. The Respondent made no response.

Breach of Solicitors Indemnity Rules 2000

7. On 31st May 2001 Eastgate Insurance Services Limited, the managers of The Law Society's assigned risks pool, wrote to the Respondent sending him a proposal form in respect of the assigned risks pool. This was not returned by the Respondent.
8. On 4th September 2001, Berwin Leighton Paisner, solicitors for Eastgate Insurance Services Limited, wrote to the Respondent indicating that their clients had had no response to their various enquiries and that the Respondent had not confirmed that he had insurance elsewhere. The Respondent was asked either to complete the proposal form or provide evidence of backdated cover with one of the qualifying insurers within 7 days. No reply was received to that letter.

9. In November 2001 Eastgate Insurance were contacted by R C on behalf of Mr Wayman. She requested proposal forms. These were sent by fax on 26th November 2001.
10. Eastgate Insurance was subsequently informed of the intervention into Mr Wayman's practice and on 17th January 2002 wrote to the intervening solicitors, Russell-Cooke, asking them to forward the attached documents to the Respondent for completion.
11. On 25th July 2001 the OSS wrote to the Respondent both in respect of practising uncertificated and in respect of the breach of Solicitors Indemnity Insurance Rules 2000. No reply was received to that letter and the OSS wrote again on 24th August 2001. Again no reply was received to that letter.

The Submissions of the Applicant

12. The Respondent had admitted the allegations, the facts and the documents. The Respondent had not practised since the intervention in November 2001.
13. The requirement to have a Practising Certificate was an important part of the regulatory frame work which was essential to maintain public trust and confidence.
14. This was the case also with the Solicitors Indemnity Rules. The Respondent had had no cover from the 1st September 2000 until the intervention, although clients were protected by the automatic cover provided in such cases by the assigned risks pool.
15. The Respondent appeared to have lost sight of these matters. Although they were administrative matters they were still an important part of professional life.
16. In devoting so much time to his clients' work the Respondent had failed to deal with this part of his professional life. The Respondent had accepted that he was not currently fit to practise.

The Submissions on behalf of the Respondent

17. The Respondent was a solicitor of 30 years' standing now in his 50s. He had started work as a corporate lawyer. He had been a sole practitioner for 20 years.
18. The Respondent's practice had been mixed initially until the 1980s. In the 1980s he suffered some set backs.
19. His book keeper had stolen £13,000 from the practice which the Respondent had made good himself without reporting the matter.
20. The Respondent was later ill, partly due to a problem with alcohol, and had to go to hospital. The locum solicitor employed had stolen in excess of £30,000 from the practice and had subsequently been convicted. The Respondent had received a small proportion of that from the insurers and had made up the rest.

21. In the mid 80s the Respondent had given up alcohol and had never drunk a drop since. He had also decided to concentrate on practising criminal law. This was his primary love, often carried out on behalf of disadvantaged members of society.
22. In the mid 1990s the Respondent was prevailed upon to take under his wing a Mr W whose firm had been intervened. The Respondent allowed Mr W to work in his office until Mr W obtained a Practising Certificate which in due course he did.
23. The Respondent did not wish Counsel to blacken Mr W's character but it was not a happy or successful move and there were huge problems within the office. The Respondent was unable to persuade Mr W to leave and the whole relationship brought great stress on the Respondent.
24. This was in part an explanation as to why the Respondent had not dealt with the issues of the Practising Certificate and the insurance.
25. The Respondent had been grossly overworking and had totally neglected these matters. The Tribunal was referred to the note of a telephone conversation on the 19th July 2001 between the OSS and the Respondent which said that when the Respondent was warned that practising uncertificated was a ground for intervention there had been no response from the Respondent.
26. The Respondent had filled in the form for a Practising Certificate and had written the cheque. He just had not sent it off. Ironically he had signed for Mr W to get his Practising Certificate but had not dealt with his own.

The oral evidence of Dr J Mugisha

27. The submissions of the Respondent were supported by the oral evidence of Dr Mugisha, Consultant Psychiatrist. Dr Mugisha had said that the Respondent had been his patient since the end of 2001 and Dr Mugisha was not surprised that at that time the Respondent had not been fully alert and had forgotten important things.
28. It was difficult to describe the number of hours the Respondent worked. He was regularly woken by the police "trawling" around to find a solicitor in the night and finding only the Respondent. Dr Mugisha himself had met the Respondent on a number of occasions at police stations.
29. Lack of sleep and excessive work could result in stress leading to exhaustion and depressive illness. The Respondent's general practitioner thought that the Respondent had been depressed for some 3 years and Dr Mugisha supported this view.
30. Depression would have a debilitating effect on cognitive functions such as planning. Lack of sleep also affected alertness and memory.
31. Dr Mugisha gave details of the plans he had made regarding treatment and care for the Respondent. Recovery would be an uphill struggle because the precipitating factors still obtained.

32. The Respondent was afraid to open his post in case it contained more bills. All the Respondent's papers had been taken by the interveners.
33. The financial uncertainty was such that the Respondent did not know if he would retain his house. Most importantly however the Respondent felt stripped of his identity. He had been a solicitor all his adult life.
34. The Respondent had no self esteem and his self image remained extremely poor as long as he could not practise. The Respondent would love to have the choice of practising and his condition would improve if he knew that he could resume work in the summer.
35. The Respondent was not currently fit to practise but with all the resources being put into his treatment Dr Mugisha expected a recovery by the end of the summer. The Respondent was extremely well motivated. He should, however, not practise alone but under employment and supervision.

The oral evidence of Mr Kevin McCubbin

36. The submissions of the Respondent were supported by the oral evidence of Mr McCubbin who had written a letter in reference of support of the Respondent.
37. Mr McCubbin had known the Respondent all his professional life. He said the Respondent was a very nice man, generous, kind and caring. If Mr McCubbin or his family needed professional assistance they would call on the Respondent.
38. The Respondent had had a number of health problems over the years but had coped doggedly. The Respondent worked too hard, indeed did everything too hard.
39. The Respondent's integrity was unmatched by anyone Mr McCubbin had ever met. He was very trustworthy.

Further submissions on behalf of the Respondent

40. The Tribunal was asked to note the Respondent's parlous financial position, details of which were given to the Tribunal. The Respondent was currently living on disability allowance.
41. There was not a shred of a suggestion of dishonesty or financial irregularity attaching to the Respondent and the Tribunal was referred to the letter of 5th December 2002 from Messrs Russell-Cooke, intervention agents, to the Applicant confirming that position.
42. There was quite a substantial sum of money in the client account owing to the Respondent but this had not been billed so had not been transferred. The total client account was in excess of £200,000, of which a substantial amount was due to the Respondent. The Respondent could not however face doing the billing and could not afford to employ anyone to do this.

43. The Tribunal was referred to the bundle of references from people who had known the Respondent well over the years. These were glowing and impressive references. They showed a man who had put in an enormous hard work for the less fortunate often for little reward. The references showed the respect and high regard in which he was held by members of the legal profession and others.
44. The Respondent's general practitioner who had known him for over 30 years and was in an unrivalled position to speak of the views of the community had written to The Law Society on 19th March 2003:-
- “I cannot say just how distressed I and all those in our community who know him are to see John in his present predicament”.
45. The Tribunal would often hear sad stories from respondents and to a certain extent had to harden its heart to maintain the reputation of the profession for the benefit of the public and other solicitors.
46. If however the Tribunal looked at all the references there was very little here that could be said to affect adversely the standing of the profession, indeed quite a lot of what had been written would serve to enhance the reputation of the profession in the eyes of the public. The Respondent had shown that lawyers did care for the people they looked after.
47. The Respondent currently did not wish to practise as he was unable to do so. His standing as a solicitor however was all he had left and the Tribunal was asked not to deprive him of that status.
48. It was submitted that the protection of the public and the profession could be marked in a way which would allow the Respondent to apply for a Practising Certificate in due course but which would enable him to call himself a solicitor which was so important to him.
49. In relation to the Respondent's previous appearance before the Tribunal in 1988, the Tribunal was asked to note that no dishonesty had been found and that no client had suffered any loss and that there had been considerable mitigating circumstances. The nature of the penalty on that occasion had been a clear indication of the view taken by that Tribunal.

The Findings of the Tribunal

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

Previous appearance on 4th February 1988

51. On 4th February 1988 the allegations against the Respondent were that he had:-
- (a) notwithstanding the provisions of Rule 8 of the said [Solicitors Accounts] Rules drawn out of the client account money other than that permitted by Rule 7 of the said Rules;

- (b) been guilty of conduct unbefitting a solicitor in that he:-
- (i) practised uncertificated since 1st November 1984;
 - (ii) utilised for his own purposes money held and received by him on behalf of clients;
 - (iii) utilised money held and received by him on behalf of certain clients for the purposes of other clients;
 - (iv) failed within a reasonable time to answer correspondence from the Solicitors Complaints Bureau with regard to the report of the Investigation Accountant of the Solicitors Complaints Bureau;
 - (v) Failed to conduct a matter with proper diligence and promptness and failed within a reasonable time to answer correspondence from another firm of solicitors.

52. The Tribunal in 1988 found the allegations to have been substantiated. The fact that money was transferred to an office account from client account when it should not have been did benefit the Respondent when it reduced the office account overdraft balance. The Tribunal were prepared to accept that there was no dishonesty in that matter and no client suffered any loss.
53. The Tribunal in 1988 accepted that the Respondent had been through an extremely difficult period in his life both for reasons of health, matrimonial difficulties and having employed employees with disastrous results and having been let down by his accountants. The Tribunal was obliged to the witnesses who attended before the Tribunal to speak for the Respondent and for the bundle of letters of a testimonial nature that were handed in at the hearing, all speaking very highly of the Respondent. The Tribunal was most concerned to find that the Respondent was continuing to practise whilst not holding a Practising Certificate. They recognised the Respondent's great difficulty in that he derived his only income from his practice and would not have been able to maintain his son if he had no income, nevertheless practising without a Practising Certificate was a continuing breach and it was essential that that breach was remedied without delay. The Tribunal accepted that there were considerable mitigating circumstances surrounding the difficulties in which the Respondent found himself and they adopted a lenient approach in respect of this. The Tribunal in 1988 ordered the Respondent to pay a fine of £500.00 together with costs.

Hearing on 25th March 2003

54. The Tribunal was impressed that the Respondent had had the courage to attend the hearing. The allegations to which the Respondent had pleaded were ones which were the corner stones of the profession and had to be observed no matter what the personal difficulties of the solicitor concerned. The Tribunal had before it however a solicitor with glowing testimonials as to his hard work and devotion to clients' difficulties. The Respondent had put those before his obligations to himself. The Tribunal had noted the medical evidence both in relation to the Respondent's current state of ill health and his health difficulties at the time of the matters before the Tribunal. The Tribunal did not intend to strike the Respondent off the Roll of Solicitors. A combination of the facts and the Respondent's previous appearance before the Tribunal meant that the appropriate penalty was an indefinite suspension. The Tribunal recommended to the Respondent that he should not apply for a lifting of that

suspension without a letter from a psychiatrist confirming that he was fit to work as a solicitor. The Tribunal made a recommendation to The Law Society that any future work by the Respondent as a solicitor should be undertaken in supervised circumstances. In making an order for an indefinite suspension the Tribunal had not closed the door on the Respondent's future professional career.

55. The Tribunal ordered that the Respondent John Stanley Wayman of Godalming, Surrey, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 25th day of March 2003 and they further ordered him to pay the agreed costs of and incidental to the application and enquiry fixed in the sum of £2,327.73.

DATED this 1st day of May 2003
on behalf of the Tribunal

W M Hartley
Chairman