

IN THE MATTER OF JOHN FRANCIS FIELDING and
STANLEY MARK JOHN KERRUISH, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A G Gibson (in the chair)
Mr. P Kempster
Mr. D Gilberston

Date of Hearing: 18th 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 (the "OSS") by Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke Solicitors of 8 Bedford Row, London WC1R 4BX on 14th October 2002 that John Francis Fielding solicitor of Chorlton-com-Hardy, Manchester and Stanley Mark John Kerruish solicitor of c/o A J Pearson Fielding Partnership, 22 Stanley Street, Liverpool L1 6AF (now of Marford, Nr Wrexham) 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 fit.

The allegations against the Respondents were that they had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

- (A) Against both Respondents-
 - (i) That they failed to keep books of accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998.

- (ii) That contrary to Rule 19 of the Solicitors Accounts Rules 1998, they drew money out of client account other than as permitted by the said Rules.
- (iii) That they utilised clients' funds for their own purposes.

(B) Against Mr Kerruish alone-

- (i) That he prepared bills of costs and transferred monies from client account to office account in circumstance which he knew were improper.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18th March 2003 when Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke Solicitors of 8 Bedford Row, London WC1R 4BX appeared as the Applicant, Mr Fielding ("the First Respondent") was represented by Mr Simon Taylor of Counsel and Mr Kerruish ("the Second Respondent") did not appear and was not represented.

The evidence before the Tribunal included the admissions of the First Respondent and a letter dated 11th November 2002 to the OSS from the Second Respondent which was handed in during the hearing by the Applicant. The Tribunal also heard oral evidence from Ms Beenham, Investigation Officer.

At the conclusion of the hearing the Tribunal ordered that the Respondent John Francis Fielding of Chorlton-cum-Hardy, Manchester solicitor be suspended from practice as a solicitor for the period of two years to commence on the 18th 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 £1,000. The Tribunal ordered that the Respondent Stanley Mark John Kerruish of Marford, Nr Wrexham, (formerly c/o A J Pearson, Pearson Fielding Partnership, 22 Stanley Street, Liverpool, L1 6AF) 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 to be fixed in the sum of £6,565.61.

The facts are set out in paragraphs 1 to 22 hereunder:-

1. The First Respondent, born in 1930, was admitted as a solicitor in 1962. His name remained on the Roll of Solicitors.
2. The Second Respondent, born in 1965, was admitted as a solicitor in 1993. His name remained on the Roll of Solicitors.
3. At all material times the Respondents had carried on practice in partnership under the style of Fielding & Co. at 454 Barlow Moore Road, Manchester, M21 0FE. On 7th June 2002 the OSS resolved to intervene in that practice.
4. Upon due notice to the Respondents, the Forensic Investigation Unit of the OSS conducted an inspection of the Respondents' books of accounts. A copy of the report dated 6th June 2002 was before the Tribunal.
5. The report noted the matters set out below.

6. During the course of the inspection the Second Respondent admitted that he had 'over billed' clients to support the practice resulting in a shortage of clients' funds. The Second Respondent said that the First Respondent was not aware of his practice of over billing clients.
7. Minimum liabilities to clients not shown by the books of account and totalling £297,118.26 existed at 17th May 2002. These client liabilities gave rise to a minimum cash shortage of that amount at that date.
8. No action had been taken at the date of the report to rectify the cash shortage.
9. The Second Respondent agreed that a minimum shortage of £297,118.26 existed and he said that he was currently looking to obtain a second mortgage on his home to raise the funds to cover a portion of the shortage. The Second Respondent insisted that he would repay the cash shortage but it would take him some 14 to 21 days to obtain the funds.
10. The First Respondent said that he would have to take advice before responding as to how he was to replace the shortage.
11. The Second Respondent admitted that he alone caused the minimum cash shortage by 'over-billing' clients and he said that he had started doing this some time in the summer of 2001 when the business was suffering financially.
12. The Investigation Officer, Ms Beenham, established that the Second Respondent would raise false bills during the course of a matter and instruct the accounting staff to transfer funds from client to office bank account. He said that he would then reverse the over-billing when the client matter was concluded, by issuing credit notes and transferring funds back to the client bank account. The Second Respondent said that the clients would ultimately be billed only the amounts which could be justified and that the clients would see only the legitimate bills.
13. The Second Respondent said that the matters he was over-billing related to both his own and client matters being handled by other fee earners. He said that the fee earners did not look at the ledgers and they did not know what was being done with client funds. The Second Respondent said that he never took a holiday and he reviewed the post daily so that he knew when he had to reimburse the client bank account.
14. The Second Respondent said that he had never permanently deprived the clients and he received no complaints from them. He admitted, however, that the clients did not know that they were being over billed and that their funds were being improperly utilised as a consequence.
15. The Second Respondent said that he did not keep written records of the client matters where he had over-billed. He did, however, provide Ms Beenham with a list, from memory, of client matters where there had been a shortage of funds due to his 'over-billings'.

16. In addition the accounting staff of the firm brought further client ledger accounts to the attention of Ms Beenham because of possible further shortages.
17. The minimum cash shortage of £297,118.26 related to the matters identified by the Second Respondent, the matters identified by the accounting staff and three further matters.
18. Details of the three further matters were set out in the report. The matter of the A Foundation is set out below by way of example.
19. This matter involved the purchase of property in the sum of £90,000 and work commenced in February 2002. Exchange of contracts had, however, been delayed until the results of an application to the Planning Department were obtained and to date the client had paid to the firm a total of £28,750 towards the purchase price.
20. It was noted, however, that during the period from February 2002 to May 2002 eleven transfers totalling £34,342.50 had been made from client to office bank account in respect of 'over billing'. On 14th May 2002, two credit notes were issued and funds totalling £10,927.50 transferred back from office to the client bank account thereby resulting in a continuing shortage of £23,415.00.
21. A copy of the report was forwarded to the Respondents by letter of 6th June 2002. Messrs Pannone Solicitors on behalf of the First Respondent replied by letters of 11th June, 12th June and 13th June 2002 and copies of that correspondence were before the Tribunal.
22. The matter was considered by the OSS on 7th June 2002 and the Respondents were notified of the decision on 24th June 2002. Messrs Pearsons Fielding Solicitors replied by letters of 20th June and 25th June 2002 on behalf of the Second Respondent. The First Respondent responded further by an undated letter received by The Law Society on 1st July 2002. A copy of the correspondence was before the Tribunal.

The Submissions of the Applicant

23. The First Respondent had admitted the three allegations against him. The Second Respondent had indicated that he did not wish to participate in the proceedings and the Applicant would therefore seek to prove the allegations made against him.

Oral evidence of Ms Beenham

24. Ms Beenham confirmed that the contents of her report dated 6th June 2002 were true.

Submissions as to the admissibility of the Second Respondent's letter to the OSS dated 11th November 2002

Submissions of the Applicant in relation to admissibility

25. In the absence of the Second Respondent the Applicant wished, in fairness to him, to put before the Tribunal the letter of 11th November 2002.

26. The Applicant did not adopt the allegations which the Second Respondent had made against the First Respondent in that letter.

Submissions on behalf of the First Respondent in relation to admissibility

27. The Tribunal had before it a skeleton argument submitted on behalf of the First Respondent relating to the admissibility to the letter.
28. The Second Respondent did not add anything in that letter to his position regarding non participation. He did, however, add pages of allegations which he had not made previously against the First Respondent and other solicitors.
29. It was appreciated that the Applicant was not going to adopt the allegations the Second Respondent had made against the First Respondent and it would therefore be practical and pragmatic for the Tribunal to see the letter on that basis.

The decision of the Tribunal in relation to admissibility

30. The Tribunal had before it correspondence between the Second Respondent and the Tribunal relating to his non participation in the proceedings. The Second Respondent had not attended to substantiate any of the allegations he was making against the First Respondent. The Tribunal noted that the Applicant did not seek to adopt any of the allegations made by the Second Respondent in his letter but was putting the letter forward only out of fairness to the Second Respondent in his absence. On that basis only the Tribunal would admit the letter.

The Submissions of the Applicant in relation to the First Respondent

31. The First Respondent had been a partner in Fielding & Co. He had had full duties as a partner and as a custodian of clients' funds.
32. There had been widespread looting of clients funds for the benefit of the practice. If the First Respondent had fulfilled his obligations as a partner this looting would have become visible.
33. In the submission of the Applicant a simple look at the bank accounts would have shown the position. Alternatively looking at any of the ledgers would have shown that money had been moved from client to office and then moved back at the time that the correct bills were raised. It was on the basis of the First Respondent's responsibility as a partner that the three allegations were made against him.
34. Allegation (iii) was made because the money was being used by a practice from which the Respondent drew an income.
35. The First Respondent should have been in a position to prevent what had occurred at an early stage.
36. The position of the First Respondent was, however, contrasted with that of the Second Respondent who had been "hands on" in what had happened.

37. There was nothing to suggest that the First Respondent had had direct knowledge of what had occurred. The issue was that as a partner he had failed by not discovering what was easily discoverable.

The Submissions on behalf of the First Respondent

38. The First Respondent's admission to the allegations was intended and was accepted by the Applicant on the basis that this was not a case of actual knowledge.
39. The First Respondent was a partner with duties and obligations under the Rules which in effect imposed a strict liability. The principle was that the First Respondent ought to have known what was happening.
40. The Tribunal was asked to note that it was the First Respondent who had drawn these matters to the attention to the OSS and had requested the intervention in order to safeguard the interests of clients. This approach to the OSS had been entirely independent from the approach of Ms P, a solicitor formerly with the firm, whose contact with the OSS was drawn to the Tribunal's attention by the Applicant. The First Respondent had approached The Law Society when he had been put on notice that there was a problem. The First Respondent had been due to go to hospital for an operation. The Second Respondent had "called in sick" and gone off and the First Respondent had phoned The Law Society. He had not been aware of any contact made with The Law Society by Ms P.
41. There had also been a police investigation. The police had received two reports, one from the OSS and one from the First Respondent who had reported the matter after the intervention. This had been a genuine bona fide reporting of matters of concern to him.
42. The First Respondent had set up fresh bank accounts to exclude the Second Respondent and had obtained a freezing order on the Second Respondent's assets as the Second Respondent had put his house on the market. The First Respondent had acted with speed.
43. The reason the First Respondent had not prevented what had occurred was due to his considerable ill health. Unusually the First Respondent's doctor had provided an affidavit for the Tribunal and the Tribunal was asked to note its contents. The First Respondent had a particularly unhappy medical history over many years.
44. The First Respondent was not guilty of a culpable offence in the true sense of that word.
45. The First Respondent had lost everything as a result of what had happened. He had lost his retirement income. The firm's building had been sold and the First Respondent had obtained the best price in order that the firm's creditors could be paid. The First Respondent was in an IVA at present.
46. The First Respondent had an unblemished disciplinary record. He was having to end his career in this way after 40 years in practice. He had not made an application to renew his Practising Certificate.

47. This matter had caused enormous personal and professional anguish to the First Respondent and it was hoped that that could be reflected in any punishment imposed by the Tribunal.
48. The First Respondent accepted entirely that he had not supervised the practice as he should have done.
49. The First Respondent's partner had acted atrociously and the First Respondent was standing before the Tribunal at the age of 72 to take the consequences.
50. All the First Respondent had left was his reputation which was, broadly speaking, intact.
51. Practitioners in his area knew of his integrity. That was the only thing which the First Respondent could take into his retirement. He wanted his fellow practitioners still to hold him in esteem.

The Findings of the Tribunal

52. The Tribunal found the allegations against the First Respondent to have been substantiated, indeed they were not contested.
53. In relation to the allegations against the Second Respondent, having considered the documentation and Ms Beenham's evidence confirming her report and in the absence of any challenge to that evidence by the Second Respondent, the Tribunal found the allegations against the Second Respondent to have been substantiated.

The First Respondent

54. The First Respondent had admitted very serious allegations. Partners in the firm were strictly liable for accounting matters. The First Respondent had to accept and had accepted that as a partner he was responsible for not preventing what had occurred to clients' money. The Tribunal noted, however, that at the relevant time the First Respondent had suffered prolonged and serious ill health and the Tribunal accepted that this was not a case of the First Respondent deliberately turning a blind eye but rather that he had not been well enough to take the part he should have taken in the practice. It was perhaps unfortunate that the First Respondent had not heeded medical advice to retire from the practice earlier. The Applicant had not put the case against the First Respondent as being one of actual knowledge of what was occurring in the practice and this was accepted by the Tribunal. The Tribunal noted that the First Respondent had no intention of returning to practice. In all the circumstances, and being mindful both of the seriousness of the allegations and of the mitigation on behalf of the First Respondent, the Tribunal considered that the appropriate penalty was a period of suspension.

The Second Respondent

55. Very serious allegations had been found substantiated against the Second Respondent. The Applicant had referred to "widespread looting of clients' funds" and the

responsibility for that lay with the Second Respondent. He had operated the system of “over-billing”. In his discussions with the Investigation Officer he had accepted full responsibility for that. The Tribunal did not accept his subsequent attempt in his letter of 11th November 2002 to share that responsibility with others by means of unsubstantiated allegations. It was essential that clients could have complete confidence in their solicitors that money held for them by those solicitors was safe. The Second Respondent had damaged the reputation of the profession by his actions and in the interest of the public he could not be allowed to continue in practice.

Costs

56. The Applicant was seeking his costs and the costs of the Investigation Officer in a total sum of £7,565.61. The Tribunal considered it right that the apportionment of the costs reflects the respective liability of the two Respondents. The greater proportion would therefore be paid by the Second Respondent.
57. The Tribunal ordered that the Respondent John Francis Fielding of Chorlton-Cum-Hardy, Manchester, solicitor be suspended from practice as a solicitor for the period of two years to commence on the 18th 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 £1,000.
58. The Tribunal ordered that the Respondent Stanley Mark John Kerruish of Marford, Nr Wrexham (formerly of c/o A J Pearson, Pearson Fielding Partnership, 22 Stanley Street, Liverpool, L1 6AF) 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 £6,565.61.

DATED this 19th day of May 2003
on behalf of the Tribunal

A G Gibson
Chairman