

IN THE MATTER OF DAVID ROY SOUTHAN DAYKIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr S N Jones
Mrs C Pickering

Date of Hearing: 10th July 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 Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool on the 16th December 2002 that David Roy Southan Daykin of Vicarage Road, London, E10 solicitor might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The Applicant also sought an order that the inadequate professional services resolutions of the Adjudicator of the OSS dated 30th August 2002 (of which there two), 21st May 2002 and the 26th June 2002 be treated for the purposes of enforcement as if they were an Order of the High Court.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) That he has failed and/or delayed in complying with two Directions made by the Client Relations Sub Committee dated 30th August 2001, such Direction being the payment of compensation of £1,000 to a Mrs R and Ms B.
- (ii) That he failed and/or delayed in complying with a Direction of the Adjudication Panel dated 21st May 2002, such Direction being to pay compensation of £250 to Mr H.

- (iii) That he has failed and/or delayed in complying with an Adjudicator's decision dated 26th June 2002, such Direction being the payment of compensation of £1,000 to Miss J.
- (iv) That he abandoned his practice and as such compromised or impaired his integrity as a Solicitor and/or failed to preserve the good repute of both himself and/or the Solicitors' Profession contrary to Rule 1 of the Solicitors Practice Rules 1990.
- (v) That he failed and/or delayed in replying to correspondence from the OSS.
- (vi) That he has failed and/or delayed in replying to correspondence from other solicitors and/or a former client.
- (vii) That he has failed and/or delayed in accounting to a former client for monies received.
- (viii) That he has failed and/or delayed in complying with an order pursuant to Section 44 B dated 10th November 2000 of the Solicitors Act 1974.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathan Richard Goodwin solicitor and partner in the firm of JST Mackintosh of Colonial Chambers, Temple Street, Liverpool appeared as the Applicant. The Respondent did not appear and was not represented.

At the opening of the hearing the Tribunal noted that an earlier division of the Tribunal had ordered that service of the proceedings upon the Respondent might be achieved by substituted service. An advertisement had appeared in the Leytonstone Guardian of the 22nd May 2003 and advertisements had appeared in The Law Society's Gazette on the 30th May and 5th June 2003. There had been no response.

At the conclusion of the hearing the Tribunal ordered that the Respondent David Roy Southan Daykin of Vicarage Road, London, E10 solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 10th day of July 2003 and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,058.37. The Tribunal further ordered that the two inadequate professional services resolutions of the OSS dated 30th August 2001 and those dated 21st May 2002 and 26th June 2002 be treated for the purposes of enforcement as if they were orders of the High Court.

The facts are set out in paragraphs 1 to 37 hereunder:-

1. The Respondent, born in 1952, was admitted as a solicitor in 1977.
2. At all material times the Respondent carried on practice on his own account under the style of Daykin & Co from offices at 155 Hoe Street, Walthamstow, London, E17 3AL. On the 24th May 2002 the Adjudication Panel of the OSS resolved to intervene into the Respondent's practice pursuant to the provisions of paragraph 1(1)(h) of Part 1 of the Schedule 1 Solicitors Act 1974 (as amended). The Panel was satisfied that the Respondent had abandoned his practice. It was understood that the Respondent closed his practice on 18th April 2001.
3. In 1989/90 the Respondent was instructed by Mr H in connection with an action in which he was the Defendant.

Mr H

4. At the time he received Mr H's instructions, the Respondent practised in partnership under the style Daykin Carr Solicitors. The partnership dissolved on the 30th April 1997. The Respondent then practised on his own account.
5. By letter dated 3rd January 2001 the Respondent accepted that responsibility for Mr H's file was his and not that of his former partners.
6. Following correspondence between the OSS, the Respondent and Mr H, the matter was considered by an OSS Adjudicator on the 20th February 2002. The Adjudicator found that the professional service provided by the Respondent was not of the quality which it was reasonable to expect of a solicitor for the reasons set out in the Adjudicator's decision. The Adjudicator concluded that Mr H was entitled to compensation for the inconvenience he had encountered as a result of the Respondent's failure to produce the files in their entirety and he awarded compensation in the sum of £250.00. The Adjudicator directed the Respondent to pay Mr H compensation of £250.00.
7. By letter dated 28th February 2002 the Respondent was notified of the Adjudicator's decision. By letters dated 11th and 17th March 2002 Mr H requested a review of the Adjudicator's decision. The Adjudication Panel Review Session considered the matter on the 21st May 2002 and resolved to dismiss the application. The Adjudication Panel Review Session resolved as follows: "Mr Daykin was directed to pay the compensation of £250.00 to Mr H within 7 days of notification of this decision and to confirm to the Office in writing immediately that he had done so".
8. By letter dated the 24th May 2002 the Respondent was notified of the Adjudication Panel's decision. The Respondent had taken up employment with Messrs Clinton Davies Pallis, Solicitors. The notification of the Adjudication Panel's decision was sent to those solicitors who on the 31st May 2002 telephoned the OSS and indicated that the Respondent no longer worked for them. It was confirmed to the OSS that the letter dated 24th May had been forwarded to the Respondent's home address and any further letters could be sent care of the firm.
9. By letter dated 11th June 2002 the OSS wrote to Clinton Davies Pallis, Solicitors confirming the telephone conversation on the 31st May 2002 and enclosing a sealed envelope marked for the Respondent's attention with the request that the same be forwarded to his home address.
10. The letter to the Respondent dated 11th June 2002 requested confirmation that the monies directed to be paid to Mr H had been so paid. The Respondent did not reply or provide confirmation of payment.

Ms J

11. By letter dated 24th July 2002 Messrs Rees Page Solicitors complained to the OSS on behalf of their client Ms J, who was a former client of the Respondent. The Respondent had been instructed to pursue a claim for damages for housing disrepair against a Local Authority. The proceedings were concluded by an agreement that damages of £4,000 would be paid and which were paid to the Respondent in or about August 1997. The Respondent paid the monies to the Legal Aid Board as required by

the Legal Aid Regulations to cover the possibility that the statutory charge would apply. Thereafter, Ms J had been attempting, without success, to ascertain the position and whether the costs had been agreed with the Local Authority so as to enable the Legal Aid Board to release some or all of the monies held on behalf of Ms J. By letter dated 17th July 2000 Messrs Rees Page wrote to the Respondent seeking explanation. The Respondent did not reply or provide explanation.

12. By letter dated 31st July 2000 the OSS wrote to the Respondent in connection with Ms J's complaint. The Respondent did not reply. By letter dated 24th August 2000 the OSS wrote to the Respondent requesting his response within seven days. The Respondent failed to reply with the result that the OSS telephoned the Respondent's practice on the 1st September 2000. The Respondent was with a client and a message was left for a return call. The Respondent failed to reply or return the telephone call.
13. On 1st September 2000 the OSS again telephoned the Respondent who was told by the receptionist that he was out at Court and a message was left for a return call. No reply was received. On 14th September 2000 a further telephone call was made to the Respondent who was available and said "I respond to things when I see things".
14. By faxed letter dated 14th September 2000 the OSS sent to the Respondent a copy of the complaint together with copies of the OSS letters to which the Respondent had failed to reply. He was requested to reply by 6th October 2000. The Respondent failed to reply or provide explanation. By letter dated 22nd September 2000 Messrs Rees Page made further representations to the OSS on behalf of their client.
15. By letter dated 13th October 2000 the OSS wrote to the Respondent seeking his explanation in relation to his failure to respond to correspondence and telephone calls both from his former client and her solicitors together with his failure to account to his client for the damages received of £4,000.. Messrs Rees Page provided further representations by letter dated 19th October 2000.
16. By letter dated 1st November 2000 the OSS wrote to the Respondent requesting a response within 7 days. The Respondent failed to reply or provide explanations. As a result of the Respondent's failure he was ordered pursuant to Section 44 B of the Solicitors Act 1974 to deliver up his file of papers, such resolution being dated the 10th November 2000.
17. By letter dated 14th November 2000 the OSS wrote to the Respondent enclosing a copy of the Section 44 B decision with a request that the file be delivered up. By hand written note on the letter from the OSS dated 14th November 2000, the Respondent replied on the 15th November, requesting the name of his client together with address and his reference.
18. By letter dated 22nd November 2000 (sent by fax and first-class post) the OSS wrote to the Respondent providing him with the full name of his client, her address and his reference. A response to earlier correspondence was requested within seven days. The Respondent failed to reply or provide explanation with the result that it was necessary for the OSS to write to the Respondent on 19th January 2001 indicating that it was a matter of professional conduct for him to fail to comply to correspondence from the OSS.

19. By letter dated 16th May 2002 the OSS wrote to the Respondent enclosing a copy of the case note that was to be considered by the Adjudicator. By letter dated 19th June 2002 the OSS wrote to the Respondent enclosing further information that was to be considered by the Adjudicator in due course.
20. On 26th June 2002 the Adjudicator directed the Respondent to pay compensation of £1,000 to Miss J. By letter dated 10th July 2002 the OSS wrote to the Respondent enclosing a copy of the Adjudicator's decision.
21. By letter dated 15th July 2002 Messrs Rees Page wrote to the OSS indicating that they were having difficulties making any contact with their client Ms J. Accordingly by letter dated 24th July 2002 the OSS wrote to the Respondent, at his home address, indicating that as Miss J's present address was unknown they would not be enforcing the Adjudicator's Direction that he pay compensation to her at that stage. However, by letter dated 13th August 2002 Rees Page wrote to the OSS indicating that they had located the whereabouts of Miss J and they provided her address. By letter dated 26th November 2002 the OSS wrote to the Respondent confirming that Miss J had been located and that he should now comply with the Adjudicator's decision dated 24th June 2002 by the payment of £1,000 compensation to Miss J. The Respondent was given seven days within which to make the payment to the OSS, failing which the matter would be referred to the Tribunal. The Respondent did not comply.

Mr & Mrs R

22. In or around 1st August 2000 Mr and Mrs R made complaint to the OSS about the Respondent's conduct. The Respondent had acted on behalf of Mr and Mrs R in connection with proposed litigation against a London Borough in connection with a housing disrepair claim together with damages for the ill health suffered by Mrs R as a result of the deteriorating condition of the property.
23. By letters dated 4th and 30th August 2000 the OSS wrote to the Respondent seeking his explanation. The Respondent failed to reply with the consequence that the OSS wrote further letters dated 19th September, 11th October, 6th November, 27th November and 6th December 2000 to the Respondent seeking his explanation. By letter dated 5th January 2001 the OSS again wrote to the Respondent seeking his explanation to which no reply was received.
24. On the 30th August 2001 the Client Relations Sub Committee considered the matter and concluded that the service provided by the Respondent was inadequate. The Committee directed the Respondent to pay compensation of £1,000 to Mrs R and to waive his right to recover any costs from her.
25. By letter dated 7th September 2001 the Respondent was notified of the Committee's decision. The Respondent did not seek a review. By letter dated 1st August 2001 the OSS wrote to the Respondent indicating that as no review had been requested could he confirm within seven days that he had complied with the decision. The Respondent failed to reply or provide confirmation with the result that the OSS wrote to the Respondent on 19th October 2001 again requesting confirmation he had complied with the decision within seven days.

26. By letter dated 26th October 2001 the OSS wrote to the Respondent at Messrs Clinton Davis Pallis enclosing a copy of the formal decision to cover the possibility that he might not have received the earlier material. By letter dated 7th November 2001 the OSS wrote to the Respondent seeking his confirmation that he had complied with the decision. The Respondent did not reply or provide explanation. The OSS wrote to the Respondent on the 16th November 2001 requesting information whether he had paid the compensation to Mr R on behalf of Mrs R (who had in the intervening period unfortunately passed away).
27. By letter dated 16th November 2001 the Respondent wrote to the OSS seeking a review of the Committee's decision. By letter dated 4th December 2001 the OSS wrote to the Respondent indicating that the period for review had expired.
28. The Respondent failed to pay the compensation as directed by the Committee on the 30th August 2001.

Miss B

29. On 19th July 2000 a Miss B made complaint to the OSS concerning the conduct of the Respondent. The Respondent had been instructed by Miss B in or around February 2000 in respect of proposed litigation against a London Borough. By letter dated 21st August 2000 the OSS wrote to the Respondent seeking his explanation. The Respondent failed to reply with the consequence that the OSS wrote to the Respondent by letters dated 13th September, 2nd, 27th November and 6th December 2000 to which the Respondent failed to reply or provide explanation.
30. On 30th August 2001 the Client Relations Sub Committee considered the matter and concluded that the service provided by the Respondent was inadequate for the reasons set out in the decision and directed the Respondent to pay compensation of £1,000 to Miss B. In addition the Committee directed that in relation to the wasted costs order obtained by the London Borough, the Respondent take immediate steps to pay the amount thereof to the London Borough, if it remained unsatisfied, or otherwise to indemnify Miss B by way of reimbursement. The Respondent was to produce evidence to the OSS of compliance with the decision. By letter dated the 7th September 2001 the OSS wrote to the Respondent enclosing a copy of the decision.
31. By letter dated 12th October 2001 the OSS wrote to the Respondent asked him to provide confirmation within seven days that he had complied with the decision. The Respondent did not reply or provide such confirmation. By letter dated 25th October 2001 the OSS wrote to the Respondent again seeking confirmation that he had complied with the decision.
32. On the 25th October 2001 a representative of the OSS telephoned Messrs Clinton Davies Pallis to speak to the Respondent. The OSS was told that the Respondent was there but was with clients and a message was left for him to return the call as a matter of urgency. By letter dated 26th October 2001 the OSS wrote to the Respondent at Messrs Clinton Davies Pallis enclosing a copy of the decision to cover the possibility he might not have received the earlier correspondence. The Respondent did not to reply nor provide explanation. By letter dated the 7th November 2001 the OSS wrote to the Respondent at Messrs Clinton Davies Pallis seeking confirmation that he had complied with the decision within seven days. The Respondent failed to reply or

provide explanation. By letter dated 16th November 2001 the OSS wrote to the Respondent indicating that as he had failed to comply with the decision the matter would be referred to the Tribunal unless he complied within fourteen days.

33. By letter dated 16th November 2001 the Respondent wrote to the OSS seeking a review of the decision. By letter dated 4th December 2001 the OSS wrote to the Respondent indicating the time for review had expired.

Abandonment of Practice

34. By letter dated 2nd May 2002 CG Property wrote to the OSS on behalf of their client Bank who were freeholders of the premises at 155 Hoe Street, Walthamstow, the Respondent's practice address. CG Property indicated that the Respondent held the lease of the premises and a surrender of the lease had been agreed as at 24th December 2001. It was indicated that the property had remained vacant since that date and that they were in the process of trying to re-let the premises, but had ascertained that the Respondent had left the premises without clearing any of his client files, Court papers etc.
35. By letter dated 7th May 2002 the OSS wrote to the Respondent at Messrs Clinton Davies Pallis seeking his explanation. On the 16th May 2002 the OSS telephoned Messrs Clinton Davies Pallis who indicated that the Respondent was on long term sick leave.
36. By letter dated 16th May 2002 the OSS wrote to the Respondent at his home address enclosing a copy of the earlier letter dated 7th May 2002 seeking his explanation and response. The Respondent did not reply or provide explanation.
37. On 24th May 2002 the Adjudication Panel resolved, inter alia, to intervene into the Respondent's practice pursuant to paragraph 1 (1) (h) of Part 1 of Schedule 1 of the Solicitors Act 1974 on the grounds that the Respondent had abandoned his practice. By letter dated 5th June 2002 the OSS wrote to the Respondent at his home address informing him of the Adjudication Panel's decision.

The Submissions of the Applicant

38. The failures of the Respondent demonstrated a dereliction of his proper duty as a solicitor. There had been a complete absence of compliance with the requirements of the OSS. It was incumbent upon solicitors to reply to correspondence addressed to them by their own professional body and further it was an essential requirement of practice for a solicitor to comply with orders or directions made by his own professional body.
39. Any failure on the part of a solicitor so to comply adversely affected the good reputation of the solicitors' profession and adversely affected his individual reputation as a solicitor.
40. It was clear that the Respondent had simply abandoned his practice. The Law Society's intervention agents had dealt with the client files and court papers left at the Respondent's former office premises. It was, of course, the abandonment of the practice that formed the grounds for The Law Society's intervention.

41. The Respondent had persistently failed to reply to communications addressed to him by the OSS. It was note worthy that in one telephone conversation with a representative of the OSS the Respondent said: "I respond to things when I see things" and kept repeating that proposition.
42. In the submission of the Applicant the papers before the Tribunal were sufficient to substantiate the allegations.
43. The Applicant sought such order as the Tribunal thought right and additionally asked the Tribunal to make an order that directions made by the OSS in respect of inadequate professional services provided by the Respondent should be treated for the purposes of enforcement as if they were orders of the High Court.
44. The Applicant sought the costs of and incidental to the application and enquiry in the inclusive figure of £9,058.34.

The Findings of the Tribunal

45. The Tribunal found the allegations to have been substantiated.
46. On the 13th July 2000 the Tribunal had found an allegation substantiated that the Respondent had been guilty of conduct unbecoming a solicitor in that he had failed to deal promptly with correspondence received from the Office. On that occasion the Tribunal said that the failure by a solicitor to respond to communications addressed to him by his own professional body made it impossible for that body to fulfil its regulatory role. That operated to the detriment to the public interest. The pursuit of non-responding solicitors greatly increased the cost of self regulation to the solicitors' profession. Such failure to respond most certainly did amount to conduct unbecoming a solicitor and was unacceptable. For that reason the Tribunal imposed a financial penalty of £1,000 upon the Respondent and ordered him to pay the Applicant's costs in a fixed sum. The Tribunal expressed concern about the Respondent's health and asked its clerk to take steps to refer the Respondent to "Solcare" and the Solicitors' Assistance Scheme.
47. On 7th June 2001 the Tribunal found the following allegations to have been substantiated against the Respondent the allegations were that the Respondent had failed to comply with a duly made decision of the Compliance & Supervision Committee in that he had:-
 - (a) failed to lodge a Legal Aid bill for taxation within three months of the date of a Court Order which expired on 26th June 1997;
 - (b) failed adequately to respond to Dowse & Co's enquiries in the matter of the outstanding Legal Aid bill of costs;
 - (c) failed to respond substantively to correspondence from the Office in the matter of the outstanding Bill of Costs and delay in lodging the Bill of Costs for taxation; and
 - (d) due to the undue delay in complying with the Court Order of 26th March 1997 and lodging the Bill of Costs for taxation in a reasonable time, or at all, failed to ensure that Dowse & Co obtained the costs to which they were entitled within a reasonable time of conclusion of the case;

- (e) failed to account to his client, Mr W for monies received by him;
 - (f) failed to respond to correspondence and telephone calls by or on behalf of Mr W;
 - (g) failed to operate an adequate complaints handling procedure in accordance with Rule 15;
 - (h) failed to respond to correspondence from another firm of solicitors Messrs Watts & Leeding regarding the completion of a Deed of Variation of a lease and failed to respond to correspondence from the Office regarding a complaint by Messrs Watts Leeding;
 - (i) failed to comply with a duly made decision of the Compliance of the Supervision Committee in that the Respondent failed to pay compensation to his clients, Mr and Mrs R, in the sum of £1,000;
 - (j) allowed breaches of the Solicitors Accounts Rules to take place;
 - (k) failed to obtain any indemnity insurance since 1st September 2000;
 - (l) failed to renew his Practising Certificate for the year 2000/2001
48. In June 2001 the Tribunal was dismayed at the number of allegation made against the Respondent. The Tribunal did, however, accept that the allegations related to management faults and that no allegation of dishonesty was made against the Respondent. The Tribunal also accept that the Respondent had suffered seriously from stress and depression. He had attempted to put matters right and ensure that similar failures would not occur again by the closure of the practice which he ran as a sole principal. The Tribunal noted the outstanding written references submitted in support of the Respondent and further noted the employment offered to the Respondent by a firm of solicitors franchised by the Legal Services Commissions.
49. The Tribunal could not let the Respondent's failure go unmarked but had borne in mind the mitigating circumstance. The Tribunal imposed a penalty of £3,000 upon the Respondent and ordered him to pay the costs of and incidental to the application and enquiry (to include the costs of the first substantive hearing) such costs to be subject to a detailed assessment if not agreed between the parties. The Tribunal made it clear that the orders made by them on 22nd March 2001 that decisions made by the Office be treated for the purposed of enforcement as if they were orders of the High Court would remain in full force and effect.
50. In July 2003 the Tribunal noted that this was the third time that the Respondent's behaviour had been referred to the Tribunal.
51. It was clear that the Tribunal had disregarded the duties which he owed to clients and to his own professional regulatory body as a solicitor.
52. Such behaviour seriously adversely affected the good reputation of the solicitors' profession. The clients who had been ill served by the Respondent had not received the compensation awarded to them. Other clients might well have been placed at great inconvenience and possibly worse when they were abandoned by the Respondent together with his practice.
53. It appears to the Tribunal, although it has no evidence to that effect that the Respondent had from some time in the year 2000 been in decline.

54. It was clear to the Tribunal from the Respondent's behaviour that the public had to be protected as did the good reputation of the solicitors' profession. In the absence of any suggestion that the Respondent had behaved dishonestly, the Tribunal considered that the protection of the public would adequately be secured, as would the good reputation of the solicitors' profession, if the Respondent were to be suspended from practice indefinitely. The Tribunal made that order and further ordered the Respondent to pay the costs of and incidental to the application and enquiry in the fixed inclusive sum requested by the Applicant. The Tribunal further ordered that the awards made in respect of the Respondent's inadequate professional services to clients be treated for the purposes of enforcement as if they were orders of the High Court.

DATED this 8th day of September 2003
on behalf of the Tribunal

L N Gilford
Chairman