

IN THE MATTER OF IVAN PETER KOLBE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs E Stanley (in the chair)
Mr I R Woolfe
Mrs C Pickering

Date of Hearing: 24th June 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 Ian Paul Ryan solicitor and partner in the firm of Russell-Cooke of 2 Putney Hill, Putney, London, SW15 6AB (now a consultant to the firm of Buxton Ryan & Co of 7-10 Market House, The High, Harlow, Essex, CM20 1BL) on 10th March 2003 that Ivan Peter Kolbe of Barnet, Hertfordshire, 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 fit.

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

- (i) That he failed to act in the best interests of a client;
- (ii) That he failed to comply with a court order;
- (iii) That he failed to keep a client informed;
- (iv) That he failed to deal with correspondence on behalf of a client;

- (v) That he failed to reply to correspondence from the OSS;
- (vi) That he failed to comply promptly or at all with a direction made by an Adjudication Panel of the OSS acting pursuant to delegated powers;
- (vii) That he practised without a valid practising certificate.

The Applicant also sought, by letter dated 3rd June 2003, an Order that the Direction made on 30th September 2002 by an Adjudication Panel of the OSS that the Respondent pay to Mrs SK the sum of £3,000 compensation pursuant to paragraph 2(1)(c) of Schedule 1A of the Solicitors Act 1974 be enforced as if it were contained in an Order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 24th June 2003 when Ian Paul Ryan solicitor and consultant to the firm of Buxton Ryan & Co of 7-10 Market House, The High, Harlow, Essex, CM20 1BL appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Ivan Peter Kolbe of Barnet, Hertfordshire, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of June 2003 and further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.

A Direction having been made on the 30th September 2002 by an Adjudication Panel of the Office for the Supervision of Solicitors that Ivan Peter Kolbe, formerly the sole partner in the firm of Peter Kolbe of 20 Fitzjohn Avenue, Barnet, Hertfordshire, EN5 2HJ do pay to Mrs S K the sum of £3,000 compensation pursuant to Paragraph 2(1)(c) of Schedule 1A of the Solicitors Act 1974, the Tribunal ordered that the said Direction be enforced as if it were contained in an Order made by the High Court pursuant to Paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

The facts are set out in paragraphs 1 to 12 hereunder: -

1. The Respondent, born in 1945, was admitted as a solicitor in 1969 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice on his own account under the style of Peter Kolbe, 20 Fitzjohn Avenue, Barnet, Hertfordshire, EN5 2HJ.
3. The Respondent was instructed by the complainant Mrs K in late 1998. Mrs K instructed the Respondent to question and contest the terms of her late father's Will. Her father had made a Will in November 1995 appointing his daughters, DS and MH (the defendant), as executors and following his death the defendant obtained a grant of probate on 29th September 1998 with power reserved to DS.

4. The Respondent prepared Particulars of Claim in February 1999 and Mrs K arranged for these proceedings to be issued on 12th February 1999. On 24th September 1999 the Court ordered the defendant to file and serve an affidavit disclosing the assets of her late father's estate and details of the administration. A number of hearings then took place and a number of Orders were then made by the Court.
5. The final hearing was originally listed for 26th May 2000 but did not take place as the Respondent had failed to serve witness statements in time and in breach of a Court Order. As a result, a Wasted Costs Order was made against the Respondent personally and he was required to pay the defendant's costs in the sum of £729.40.
6. The Respondent also failed to comply with a Court Order dated 7th September 2000 which directed that Mrs K's witness statement be served by 13th September 2000 and a listing questionnaire by 9th October 2000. The Respondent failed to comply with the Court Order and the directions and on 18th October 2000 he wrote to Mrs K stating:-

“I have to apologise but I am unable to cope with your case. It is causing me worries and particularly in the light of the unexpressed animosity towards me I cannot continue to have anything more to do with you. I enclose my file of papers and would advise you to consult another solicitor near to where you work or live and let him take it from there. You will see that there is an application returnable at the beginning of November.

I will send you another package containing the remainder of the papers.”

7. The Respondent failed to inform Mrs K of the defendant's application to strike out her claim on the basis that there had been a failure to comply with the rule, practice direction or Costs Order as a result of the failure to provide witness statements. That application was returned on 7th November 2000 and the Court ordered Mrs K's claim to be struck out and she was required to pay the defendant's costs in the sum of £755. The Respondent was ordered to attend Court on 5th December 2000 to show cause why he should not indemnify Mrs K against the order for costs. He declined to attend and agreed to indemnify Mrs K and indeed forwarded the costs to her on 4th December 2000.
8. When the Respondent terminated the retainer he returned the file to Mrs K and in due course the file was forwarded to the OSS in support of the complaint. It was necessary for the OSS to examine the file due to the Respondent's failure to respond to any correspondence and within the file were three unopened envelopes addressed to Peter Kolbe Solicitor postmarked as being sent by the defendant's solicitors and date stamped 19th September 2000, 10th October 2000 and 18th October 2000. These letters had clearly not been opened by the Respondent and after notice was given to all parties these three letters were opened. The Respondent also failed to come off the record.
9. As a result of the Respondent's conduct Mrs K wrote to him on 1st November 2000 setting out her concerns. The Respondent failed to reply and Mrs K therefore

complained to the OSS on 17th November 2000. The Respondent was written to by the OSS in relation to the complaint on 20th February 2001, 23rd March 2001, 19th April 2002, 16th May 2002, 15th July 2002, 16th July 2002 and 6th August 2002. He was also telephoned by the OSS on 13th March 2001, 12th April 2001 and 26th April 2001. The Respondent failed to reply to the letters or telephone calls from the OSS in any substantive way. He wrote to the OSS on 17th August 2000 acknowledging receipt of a letter.

10. The matter was considered by the Adjudication Panel of the OSS on 17th September 2002 when a hybrid decision was made to refer the Respondent to the Tribunal and inter alia to award Mrs K £3,000 for the Respondent's inadequate professional services.
11. The Respondent was informed of the hybrid decision and the rights of the parties by a letter from the OSS dated 8th October 2002. He was written to again on 23rd October 2002 with confirmation that the decision had now become final and he was asked to comply with the award for compensation. He failed to comply with the award and was written to again on 7th November 2002. That letter contained a warning that unless the Respondent complied with the Direction within 14 days a referral to the Tribunal might result. The letter also warned that an enforcement direction might be sought. He did not rely to any of these letters and failed to comply with the Direction made by the Adjudication Panel.
12. The Respondent applied for a practising certificate for the practice year 2001/2002. He was written to by the OSS on 25th November 2002 and informed that unless he returned the application form RF3 previously sent together with the required fee by 9th December 2002 his practising certificate would be terminated with effect from 10th December 2002. He failed to do this and his practising certificate was therefore terminated on 10th December 2000 and he was informed of this by letter of the same date. As a result the Respondent was practising uncertificated and the matter was considered by the Adjudication Panel on 22nd January 2003 when the Panel resolved inter alia to intervene into the Respondent's practice.

The Submissions of the Applicant

13. The Respondent had admitted the allegations. It seemed strange that a solicitor of some 30 years' experience who was respected and competent would fail to deal with matters in this way. The Tribunal was asked to note that the intervention agent had said that the Respondent's office was somewhat in disarray and in the opinion of the intervention agent the Respondent had been unwell and suffering from depression and had been unable to respond to matters.

The Submissions on behalf of the Respondent

14. The Respondent had reached the bottom of the trough. He had not been happy for some years. He had dealt with most of his clients' matters competently and efficiently and had a loyal following of clients. He did not accept that his office had been in disarray.

15. He had been unhappy at home and at work and had found it increasingly difficult to cope. When letters had come to him from The Law Society this had brought him further down and he had been unable to bring himself to open them.
16. It was now clear to the Respondent that he had been suffering from depression but he had only been able to admit this since the beginning of this year. He was now taking medication and seeing a counsellor. He had concluded that he would never be a solicitor again.
17. The Respondent was in debt, not least because of the intervention costs of some £20,000. He was at the bottom of a hole and could not go any deeper. This had been a horrendous period and he had not been able to discuss it with anyone or see a way out of his predicament. The Respondent apologised to the Tribunal.
18. In relation to Mrs K, the Respondent considered that Mrs K had transferred to him the animosity which she felt towards her sister. The Respondent should have stopped acting for her earlier. He could not cope with any more unpleasantness, such as he was already getting from other sources, because he was already ill. There had been no complaints regarding other matters conducted by the Respondent but in this matter he was being harangued.
19. In relation to his failure to apply for a practising certificate, in his mind he had already given up. He could not get sufficient courage to open the correspondence from The Law Society.
20. The Respondent admitted all the allegations and his failings in relation to the matter of Mrs K. He was not currently working but had applied for a job as a school caretaker.

The Findings of the Tribunal

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

Previous appearance before the Tribunal on 13th December 2001

22. At a hearing on 13th December 2001 the following allegations were substantiated against the Respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-
 - (i) that he failed to comply with a Direction made by an Adjudicator of the OSS acting pursuant to delegated powers;
 - (ii) that he failed to reply to correspondence from the OSS promptly or at all.
23. The Tribunal in December 2001 said that it was always very serious for a solicitor to ignore the decision of an Adjudicator and correspondence from the regulatory body. The Tribunal gave the Respondent credit for attending the hearing and confronting the issues which hitherto he had found it too difficult to do. It had taken a great effort for

the Respondent to tell the Tribunal what had occurred. The Respondent was clearly distressed and had told the Tribunal in clear terms that he accepted the gravity of his actions. He had apologised and was facing up to what had happened. The Tribunal was pleased to hear the Respondent acknowledge his problems but his failure to act earlier remained a matter of concern and the Tribunal urged the Respondent to take steps to discuss his problems with professional colleagues, The Law Society, his local Law Society and/or his family.

24. The seriousness with which the Tribunal regarded failure by a solicitor to respond to a regulatory body would be reflected in the financial penalty imposed.
25. The Tribunal on 13th December 2001 ordered the Respondent to pay a fine of £3,000 together with the Applicant's costs.
26. The Tribunal in 2001 further ordered that a Direction made by the Adjudicator for the OSS be enforced as if it were contained in an Order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

Hearing on 24th June 2003

27. This was a very sad case of a solicitor who had been unable to cope because of ill health and the Tribunal gave the Respondent credit for appearing before the Tribunal and for being candid regarding his state of health. The Respondent had not yet complied with the Direction of the Adjudication Panel which was a serious matter as were the other allegations substantiated against him. The Respondent's previous appearance dealt with similar failures on the part of the Respondent and the Tribunal on 24th June 2003 accepted that the matters raised on both occasions could be attributed to the ill health which the Respondent had now recognised. The Respondent had said that he did not intend to work as a solicitor again and clearly at present his health was such that it would not be appropriate for him to do so. The appropriate penalty was a period of suspension which, in the light of the Respondent's ill health, would be for an indefinite period. Should the Respondent wish to return to practice after a period of successful treatment and the restoration of his health then it would be open to him to apply to the Tribunal for the lifting of the suspension.
28. In addition to the imposition of the indefinite suspension the Tribunal would make the Order sought in relation to the Direction of 30th September 2002.
29. The Tribunal ordered that the Respondent Ivan Peter Kolbe of 20 Fitzjohn Avenue, Barnet, Hertfordshire, EN5 2HJ solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of June 2003 and they further ordered him to pay the costs of and incidental to the application and enquiry to be subject to detailed assessment unless agreed.
30. A Direction having been made on the 30th September 2002 by an Adjudication Panel of the Office for the Supervision of Solicitors that Ivan Peter Kolbe, formerly the sole partner in the firm of Peter Kolbe of 20 Fitzjohn Avenue, Barnet, Herts, EN5 2HJ do pay to Mrs S K the sum of £3,000 compensation pursuant to Paragraph 2(1)(c) of Schedule 1A of the Solicitors Act 1974, the Tribunal ordered that the said Direction

be enforced as if it were contained in an Order made by the High Court pursuant to Paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

DATED this 5th day of August 2003
on behalf of the Tribunal

E Stanley
Chairman