

IN THE MATTER OF IAN PETER MOSS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A H Holmes (in the chair)
Mrs E Stanley
Lady Bonham-Carter

Date of Hearing: 23rd September 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 Emma Grace solicitor and partner in the firm of Nelson & Co., St Andrews House, St Andrews Street, Leeds, LS3 1LF on the 13th March 2003 that Ian Peter Moss of 58 New John Street, Halesowen, East Midlands, B62 8HH 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 right.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in that he:-

- (i) abandoned his practice
- (ii) failed to deal promptly and substantively with correspondence from the OSS
- (iii) failed to pay Counsel within three months or at all
- (iv) attempted to frustrate a lawful intervention into his practice
- (v) failed to deal promptly with communications relating to the matters of clients and/or former clients.
- (vi) failed to keep accounting records properly written up in accordance with rule 32 of the Solicitors Accounts Rules 1998
- (vii) failed to comply with an Adjudicator’s decision dated 8th October 2002

- (viii) in all matters alleged against him acted in a way which compromised or impaired his independence and integrity, his duty to act in the best interests of clients, his good repute and that of the profession contrary to rule 1 of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Emma Grace appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent and a letter from the Respondent's general practitioner dated the 4th April 2002.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal order that the Respondent, Ian Peter Moss of 58 New John Street, Halesowen, East Midlands, B62 8HH solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the day of 23rd September 2003 and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,590.16.

The facts are set out in paragraphs 1 to 29 hereunder:-

1. The Respondent, born in 1965, was admitted as a solicitor in 1992.
2. The Respondent carried on practice as a sole principal in the firm of Ian Moss and Co, initially at 41 Temple Street, Birmingham, and subsequently at 58 New John Street, Halesowen, East Midlands B62 8HH.
3. In early 2001, The Law Society received calls from clients of the Respondent indicating that they were unable to get in touch with him at 41 Temple Street. On 19th April 2001, the Society attended the offices, and were informed by the Respondent that he was moving towards closing his firm, and had passed on most of his clients to other solicitors. The Respondent assured the Society that the problems had been temporary, due to his being at an employment Tribunal.
4. On 31st October 2001, the Society received a letter from P & J Debt Collection Services stating that they were unable to contact Mr Moss and asking for a note of the new address.
5. On 1st November, The Law Society spoke by telephone with the Respondent to ascertain the situation. The Respondent informed the Society that the lease on his premises was due to be assigned in the near future, and at that point he would notify The Law Society that he had ceased to practise. He confirmed that he was still collecting post from 41 Temple Street, and agreed he knew there were outstanding matters to be sorted out.
6. On 11th December, the Society wrote to the Respondent confirming that complaints had been received from clients that they had been unable to contact him. He was asked to contact the Society immediately.
7. On 17th December, the Society telephoned the Respondent, who informed them he was working for Amery-Parkes Solicitors in Birmingham. The Respondent stated he

was still waiting for the assignment of the lease to be completed before closing his firm. He planned to transfer all existing matters to Amery Parkes, subject to their agreement. He was informed that clients were unable to contact him and the Respondent confirmed that he would write to them all.

8. On 7th January 2002, the Society wrote again to the Respondent asking him again to contact all of his existing clients immediately to inform them of the current position.
9. On 21st January the Society called the Respondent at Amery Parkes, following up the previous calls and letters. The Respondent stated he could not recall the previous call or letter, but confirmed that he was still trying to assign his lease. The Respondent stated that he had written to all his existing clients to up-date them. He was asked to confirm this in writing to the Society, failing which a disciplinary sanction might be considered as he had failed to reply to correspondence. It was agreed that the Society would send him a copy of the letter of 7th January and that the Respondent would reply to it.
10. On 24th January 2002 the Society wrote to the Respondent, sending a further copy of the letter of 7th January, and asking for confirmation in writing that all the clients had been written to as claimed. The Respondent was given 14 days to respond to this letter failing which notice under s12(1)(e) of the Solicitors Act 1974 might be given.
11. On 26th April 2002, the Society received a letter from Amery-Parkes, confirming that they had not taken over the practice of Ian Moss & Co, nor the client account of that firm. The letter confirmed that there were approximately 20 files of Ian Moss & Co at their premises, although the Respondent himself was absent from the offices.
12. On 9th May 2002, the Society received a letter from the fees administrator of Matrix Chambers. This letter enclosed David Bean QC's invoice to Ian Moss & Co, which was outstanding, plus letters chasing Mr Moss for payment and a copy of a previous letter to The Law Society.
13. In May 2002, the Society exchanged a number of e-mails with Ms S at Amery-Parkes with regard to the Respondent. Ms S confirmed that the Respondent had been dismissed from their firm. A number of the Respondent's files remained at Amery-Parkes. They had not been collected, despite requests to do so to the Respondent. Following this exchange, Ms Sohpal sent a list of those files to the Society.
14. On 31st May 2002 the Society received a letter from Mr J, a former client of the Respondent, who was attempting to track down his file in order to consider a negligence claim. The letter enclosed a recorded delivery slip, showing that his letter to 41 Temple Street had been re-directed to 58 New John Street, Halesowen. There had been a refusal to accept the letter.
15. On 14th June 2002, an emergency delegated decision was made by a chairman under s79 Solicitors Act 1974. The decision was to intervene in the Respondent's practice. The Respondent was informed of this decision in writing on 2nd July 2002.
16. Ms Jayne Willetts of Hammond Suddards Edge in Birmingham was appointed as The Law Society's agent to deal with the intervention. Ms Willetts and her firm experienced considerable difficulty in contacting the Respondent in order to carry out the intervention, and a statement was prepared by that firm in support of an injunction

to gain entry to the Respondent's premises, although in fact entry was obtained by consent.

17. The intervention was carried out on 18th June 2002. Due to the state of the Respondent's book-keeping records, Hammond Suddards Edge were instructed not to carry out a reconciliation of the accounts. A breakdown of the file distribution was compiled.
18. On 30th June 2001, Mr M wrote to the Society outlining his concerns and complaints against the Respondent. The Society replied asking that the complainant use the Respondent's internal complaints procedure and confirming that the complaint would be faxed to the Respondent's firm.
19. The Society then attempted to contact the Respondent about this complaint, and sent a letter on 21st August 2001 chasing this up. The complainant then responded to the Society confirming that the internal procedures had been used and he considered, exhausted. The Society passed the complaint to the Solicitors Practice Unit.
20. On 26th October 2001, the Society wrote to the Respondent outlining the complaint received and requesting a response within 2 weeks of the date of the letter. The Respondent replied on 19th November 2001, dealing with some aspects of the complaint.
21. Two letters were sent to the complainant seeking his response to the Respondent's letter, on 29th November 2001, and 17th December 2001. The complainant by e-mail explained the delay (due to the death of his sister). He replied in more detail on 19th December 2001 making it clear that he was still not happy with the Respondent's response.
22. The Society wrote again to the Respondent on 9th January 2002, setting out the outstanding issues which needed to be addressed and asking for a response within 14 days. The Society wrote on 28th January 2002 seeking a response to their letter of 9th January. When no response was received, the Society wrote again on 14th February 2002, enclosing copies of the previous two letters, and informing the Respondent, that unless a response was received within 8 days, the matter might be regarded as unprofessional conduct on his part.
23. Later, when the Respondent had moved to Amery-Parkes, with his consent, his supervising partner wrote to the Society on 26th February 2002 with a response to the letter of 9th January 2002. The letter stated that it was not felt that the complaint could be resolved.
24. The Society wrote to the Respondent on 31st July 2002, confirming the matter was being referred for formal adjudication and sending a copy of the report to be considered, inviting the Respondent's representations within 14 days.
25. On 8th October 2002, the Adjudicator considered the matter and found:-
 - (1) that the Respondent had failed to reply promptly and substantively to correspondence from the OSS

- (2) that the service provided was not of the quality that it was reasonable to expect of a solicitor.

The Adjudicator awarded a sum of £400 compensation for inconvenience, plus the sum of £150 in reimbursement of disbursements paid by the complainant, and directed that the Respondent pay the sum of £400 and £150.

26. The decision was sent to the Respondent on 14th October 2002. On 29th October 2002, the Society wrote to the Respondent confirming that no application for review had been made, and thus the file would be closed.
27. Following non-payment of the sums ordered by the Adjudicator, the Society wrote to the Respondent on 19th November 2002, confirming that unless he complied with the decision within 14 days of the date of the letter, consideration would be given to a referral of the matter to the Tribunal. The Society sought confirmation from the Respondent that the sums had been paid within 14 days.
28. On 17 December 2002, following non-receipt of confirmation of payment, the Adjudicator decided that the Respondent should be referred to the Tribunal.
29. The Respondent confirmed that the sums directed to be paid by him had been paid prior to the disciplinary hearing by The Law Society's intervention agent.

The Submissions of the Applicant

30. The Respondent admitted both the facts and the allegations on the basis that he had no intention of creating the outcome which resulted. The Applicant confirmed that she did not put the matter on the basis that the Respondent deliberately set out to cause problems and create the events which transpired.

The Submissions of the Respondent

31. The Respondent confirmed that he had not deliberately set out to create the problems which had arisen. He handed up a letter addressed to Amery-Parkes by his general practitioner in April 2002. It confirmed that the Respondent had been suffering from a depressive illness which seemed to have been triggered by a number of problems within his life.
32. The Respondent told the Tribunal that his practice had opened in 1996 and undertook in the main personal injury work. The practice grew and by the middle of 2000 he employed some six or seven staff. His firm had not been particularly successful from a financial point of view and it had encountered cash flow problems. The personal injury work included a number of legally aided matters.
33. It was in mid 2000 that there was a change to funding of Legal Aid personal injury matters. Legal Aid was withdrawn and solicitors were expected to work on a conditional fee basis. That change had made the Respondent's business financially untenable.

34. From the middle of 2000 he had undertaken no new cases. During September and October 2000 he had arranged for a number of personal injury files to be transferred to another firm. The Respondent's intention in behaving in that way was to protect his clients' interests. It had become clear to the Respondent that he would have to close down his practice. The difficulty arose when the firms to whom other work had been transferred declined to take over some matters. The Respondent had to continue to look after the clients concerned. He still held the lease of his office premises and that was a major financial liability.
35. The Respondent had at the time when the difficulties arose been a sole practitioner with little support. He was put under a great deal of pressure both to cope with financial difficulties and look after clients' interests. His plan had been to transfer over his files and assign the lease of his office premises.
36. By the end of 2001 the Respondent had taken up employment with a view to reserving practice funds to meet liabilities including Counsels fees. The Respondent took on locum work at Amery-Parkes and had discussed their possibly taking over his remaining personal injury files. That in fact did not happen.
37. By early 2002 the Respondent had become quite ill. It was then that he had sought the help of his general practitioner and the letter of April 2002 had been written. The Respondent had found it incredibly difficult to deal with his financial problems and the issues raised by the OSS. He had found it almost physically impossible to open an OSS file.
38. The Respondent had not simply left his practice. He accepted that perhaps the process of running down his practice had not been well managed but he did try to protect his clients' interests.
39. The Respondent was dismissed by Amery-Parkes in about April 2002 and thereafter the Respondent found it extremely difficult to deal with things.
40. The Respondent accepted that Counsels' fees had not been paid. There were funds in the practice and he had intended to make a full payment. Such matters had been taken out of the control of the Respondent but he believed that there would be some £60,000 to £70,000 of costs income generated that could be applied to outstanding financial liabilities.
41. The Respondent said that he had never opened and refused then to accept delivery of a letter.
42. Since encountering his difficulties the Respondent had gained employment with Citizens Advice where he was an employment advisor. He was working in an atmosphere very different from that of private practice as a solicitor and he found it congenial.
43. The Respondent had recovered his good health to a considerable degree. He had felt well enough to appear before the Tribunal.
44. The changes in the provision of Legal Aid really had triggered the Respondent's difficulties. He had worked hard to get work in but then did not receive payment of his fees for some three or four years. He had to pay his office rent and his staff. He

believed that if they undertook sufficient work they would be able to ride through the difficult early years. They did in fact attract a great deal of work but did not earn any money.

45. The Respondent had not sought medical help until early 2002. He was prescribed anti-depressants and underwent counselling. He found it very difficult to admit the failure of his business in to which he had put much time and effort. In such a small office with a small number of staff the staff were regarded by the Respondent as friends. That was an additional burden making it even more difficult to bring things to an end. The Respondent had come to accept that he should have taken steps earlier and he should have sought more help at an earlier stage. As it was he sought help when he had reached a stage of feeling suicidal.

The Findings of the Tribunal

46. The Tribunal found the allegations to have been substantiated, indeed they were not contested. Such behaviour on the part of a solicitor could only serve to damage that solicitor's own good reputation and the good reputation of the solicitors' profession.
47. The Tribunal has taken due note of the Respondent's explanation and the Applicant's acceptance of that explanation that the Respondent had not deliberately set out to behave as he did. The Tribunal accepted the Respondent's evidence as to his poor mental health and is pleased to note that he has made a considerable recovery and is working in a job which he considers has proved beneficial to his mental health.
48. The Tribunal has before it no formal medical evidence as to the full recovery by the Respondent of his mental health and in all the circumstances of this case the Tribunal considers it right to suspend the Respondent from practice for an indefinite period, pointing out to him that it is open to him to apply to the Tribunal to have such period of suspension determined. The Tribunal would, in support of such application, expect the Respondent to lodge clear medical evidence as to the recovery of his mental health and his fitness and ability to practise as a solicitor.
49. In view of the fact that the allegations had been found to have been substantiated against the Respondent it was right that he should pay the costs of the application and enquiry and the Tribunal ordered that such costs should be in the fixed sum sought by the Applicant to which the Respondent raised no objection.

DATED this 3rd day of December 2003
on behalf of the Tribunal

A H B Holmes
Chairman