

IN THE MATTER OF ROBERT HARVEY GREENFIELD AND JAMES SMITHSON

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J N Barnecutt (in the chair)
Mrs. H Baucher
Mr. J Jackson

Date of Hearing: 4th November 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 Ian Ryan, formerly consultant in the firm of Buxton Ryan & Co, 7-10 Market House, The High, Harlow, Essex CM20 1BL but subsequently of Bankside Law of Thames House, 58 Southwark Bridge Road, London SE1 0AS on the first day of April 2003 that Robert Harvey Greenfield of Handcross, West Sussex and James Smithson of Clayton, near Hassocks, West Sussex BN6 9PJ 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 Respondents had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (i) That they failed to comply with the Solicitors Indemnity Insurance Rules 2001 by failing to pay promptly or at all the premiums payable to the Assigned Risks Pool for the indemnity period 1st September 2001 to 31st August 2002;
- (ii) That the First Respondent produced to the Investigation Accountant of The Law Society a document with intent to mislead the said Investigation Accountant;
- (iii) That the Second Respondent continued to practise in breach of a Practising Certificate condition;

- (iv) That they have failed to comply with an order of the Brighton County Court dated 4th July 2000 promptly or at all;
- (v) That they have failed to reply to correspondence from the OSS;
- (vi) That they have failed to comply with an order of the Brighton County Court dated 11th June 2001 promptly or at all;
- (vii) That they have failed to comply with an order of the Clerkenwell County Court dated 18th September 2001 promptly or at all.

At the opening of the hearing the Applicant indicated to the Tribunal that he did not seek to proceed against Mr Smithson in connection with allegation (ii) and he did not seek to proceed with allegation (iii) against Mr Greenfield (both of those allegations originally being framed against both Respondents). The Tribunal has incorporated those amendments into the way the above allegations have been framed.

The evidence before the Tribunal included the oral evidence of Mr R D Sutherland. After the Tribunal had reached its decision that all of the allegations had been substantiated, the Applicant handed up Mr Smithson's letter to the Applicant dated 13th May 2003. At the opening of the hearing the Applicant indicated that he had received notification from Mr Smithson that he accepted and admitted allegations (i), (iv), (v), (vi) and (vii). Mr Greenfield had made no admissions.

The Applicant invited the Tribunal to agree that time limits laid down by the Rules might be abridged. Both Respondents were fully aware of the proceedings. Neither of the Respondents had co-operated with the Applicant. The Tribunal, being satisfied that the Respondents were aware of the details of the disciplinary proceedings, granted leave to the Applicant to proceed.

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

The Tribunal order that the Respondent Robert Harvey Greenfield of Handcross, West Sussex, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application including the Investigation Officer of The Law Society's costs fixed in the sum of £3,880.48p, and the Applicant's costs to be subject to a detailed assessment if not agreed between the parties.

The Tribunal order that the Respondent James Smithson of Clayton, near Hassocks, West Sussex, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application including the Investigation Officer of The Law Society's costs fixed in the sum of £3,880.48p, and the Applicant's costs to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 13 hereunder: -

Failure to comply with the Solicitors Indemnity Insurance Rules 2000 and the production to the Investigating Accountant of The Law Society of a document with intent to mislead

1. Mr Greenfield was born in 1952 and was admitted as a Solicitor in January 1987. Mr Smithson was born in 1949 and was admitted as a solicitor in 1977. At all material times the Respondents were carrying on in practice in partnership under the style of Smithson Greenfield & Co of 59-61 The Broadway, Haywards Heath, RH16 3AS.
2. The Investigating Accountant (the IA) of The Law Society attended at the offices of Smithson & Greenfield (the firm) on 11th December 2001. The IA's Report dated 16th January 2002 was before the Tribunal.
3. During the course of his inspection the IA had cause to question the Respondents about their professional indemnity insurance.
4. The firm had originally applied to join the Assigned Risks Pool by completing a proposal form dated 31st August 2000 as a result of which professional indemnity insurance was provided for the period from 1st September 2000 to 31st August 2001. This cover expired on 31st August 2001 and despite a number of requests from Eastgate Insurance Services Limited the Respondents did not re-apply for insurance cover.
5. The IA was informed by Mr Greenfield that he had written to Eastgate Insurance Services seeking an extension of cover, initially from 1st September 2001 to 31st October 2001 and subsequently from 1st September 2001 to 31st December 2001.
6. After requests, Mr Greenfield eventually provided copies of his letters to Eastgate Insurance Services Limited, but when the IA inspected the copies provided he noted that they were dated 25th October 2002 and 5th November 2002.
7. On contacting Eastgate Insurance Services Limited, the IA was informed that neither of these letters had been received by them. When the IA raised the matter with the Respondents on 8th January 2002 Mr Greenfield insisted the letters were both genuine and that they had been sent to Eastgate Insurance Services Limited.

Practising in breach of a Practising Certificate condition

8. On 23rd October 2001 an Adjudicator of The Law Society directed that the Respondents' Practising Certificates should be subject to the immediate condition that they may act as solicitors only in employment approved by the OSS or as a member of a partnership which was so approved. The imposition of the condition was suspended for two months and came into force on 2nd January 2002. Both Respondents were notified separately of the imposition of the condition by letter dated 2nd November 2001.
9. When the IA returned to the firm on 8th January 2002 the office was still being operated as it had been prior to the imposition of the condition. Both Respondents were in attendance and seeing clients and dealing with day to day matters. The breach of the Practising Certificate conditions was raised with both Respondents by the IA. In his Report the IA recorded the Respondents' responses as follows:-

“Mr Greenfield said that he had written to the Secretary of The Law Society on 5th December 2001 and that he was awaiting some response. The IA informed Mr Greenfield that he had checked with the Office and no such letter had been

received. Mr Greenfield then said “I have faxed a copy of my letter to Regulation at Leamington Spa today and I await developments”. The IA asked Mr Smithson whether he had made any application to The Law Society for approval and he said “No - I don’t want to do it any more.”

Failure to comply with an order of the Brighton County Court dated 4th July 2000 and failure to reply to correspondence from the OSS

10. The Respondents failed to pay an expert’s professional fees in respect of a medical report requested in May 1995. Judgement was obtained by the expert against the firm on 4th July 2000.
11. The OSS wrote separately to the Respondents on 25th February 2002, 10th April 2002, and 10th May 2002. Mr Smithson responded by letter dated 15th May 2002 saying he has been assured by Mr Greenfield that he was dealing with it. There was no substantive reply from either Respondent. On 12th June 2002, the expert confirmed that neither Respondent had complied with the terms of the Court Order.

Failure to comply with an order of the Brighton County Court dated 11th June 2001

12. Judgement was obtained against the firm at Brighton County Court in connection with the firm’s failure to release a former client’s papers to his new solicitor. The OSS wrote separately to the Respondents in relation to this matter on 10th July 2001. The Respondents did not reply to this letter and had not complied with the Court Order.

Failure to comply with an order of the Clerkenwell County Court dated 18th September 2001

13. Judgement was obtained against the Respondents at the Clerkenwell County Court on 18th September 2001 relating to the breach of an implied conveyancing undertaking and that judgement had not been complied with.

The Submissions of the Applicant

14. The Applicant relied on the documents which had been placed before the Tribunal and had been the subject of Notices to Admit. The documents spoke for themselves. Neither Respondent had produced anything to dispute any of the documents.

The Submissions of Mr Greenfield

15. Mr Greenfield took no part in the proceedings.

The Submissions of Mr Smithson (contained in his beforementioned letter of 13th May 2003)

16. “Dear Mr Ryan

Thank you for your letter of 30th April.

I comment as follows:-

1.(i) I confirm that this is admitted.

(ii) I confirm that this is denied.

I respect [sic] that I had no specific knowledge of the alleged correspondence other than that Mr Greenfield had advised me that matters were in hand.

(iii) To clarify the position, I was indeed working at the time of [the IO's] call. I was passing work to other solicitors. I did not hold myself out to clients or other solicitors as still being in practice.

At the time Mr Greenfield was spending the majority of his day at Rohan & Co., having only taken a proportion of his files with him. Much of my time was spent in referring clients etc. to Rohan & Co.

(iv) [Brighton County Court Order of 4th July 2000]

It is admitted that the firm did not comply with this order as required. In my own mitigation I raised the matter with Mr Greenfield who assured me he was contacting [the expert] himself.

(vi) [Brighton County Court Order of 11th June 2001] I appreciate that the judgement was against the firm and as such I was jointly and severally liable. I emphasise that I have no recollection of being served with any of the initial papers or the judgement. I was aware that there was a problem with this client who owed the firm substantial but unbilled abortive conveyancing charges in respect of work carried out by me. I reminded Mr Greenfield on various occasions but was assured that these were continuing proceedings on which we would be paid.

I repeat that I was first aware of the severity when I was served with the possession proceedings against me. Even at that time I was initially assured that Mr Greenfield would put the matter in the hands of the insurers and the matter would be settled.

In the event, I settled the claim personally.

(vii) [Clerkenwell County Court Order of 18th September 2001]

I again appreciate that the firm failed to comply with the judgement and this is admitted but yet again I had no knowledge whatsoever of this matter but the allegation must be admitted.

(v) I admit this allegation I should of course have replied personally but as the correspondence concerned Mr Greenfield's client I passed on all such correspondence to him and naively relied upon his replying as necessary as he was anxious to join Rohan & Co. once he had cleared the substantial outstanding problems.

Finally I would emphasise most strongly that although the tenor of this letter is one of passing the buck on my former partner Mr Greenfield. [sic] However I do totally accept full liability for all admitted allegations as admitted above. Nevertheless I feel I

should enlarge on various circumstances regarding the practice over the two or three years prior to the firms closure.

As outlined by counsel at the previous tribunal, my personal life. [sic] At the time I thought I could cope but this was not the case and I developed depression and lapsed into alcoholism.

Consequently I left day to day running of the practice to Mr Greenfield who informed me that was awaiting an offer of funds to enable him to amalgamate the practice with that of Rohan & Co.

Mr Greenfield and I were made bankrupt in November last year.

Yours faithfully

JRG Smithson”

The Decision of the Tribunal

17. The Tribunal find allegation (i) to have been substantiated against both respondents. Allegation (ii) was found to be substantiated against Mr Greenfield only. The Tribunal in that respect accepted the IA’s evidence that he had to press Mr Greenfield to produce the letters and then the letters themselves on their face bore the wrong date. Eastgate did not receive any letters from the Respondents. The Tribunal finds that in producing such letters Mr Greenfield had written the letters for the purposes of misleading The Law Society’s Investigation Officer and he had thereby formulated an intention to mislead.
18. The Tribunal found allegation (iii) to have been substantiated only against Mr Smithson.
19. The Tribunal found allegations (iv) to (vii) inclusive to have been substantiated.
20. At a hearing on 21st November 2001 the Tribunal found the following allegations to have been substantiated:-

In respect of Mr Greenfield:-

- (i) That he failed to comply with a professional undertaking;
- (ii) That he failed to carry out the instructions of a client with due diligence;
- (iii) That he has been responsible for unreasonable delay in the delivery of a client’s papers.

In respect of Mr Smithson:-

- (iv) That he failed to complete a Legal Charge in accordance with the instructions of a client;

- (v) That he failed to complete a Certificate of Title in accordance with the instructions of a client;
- (vi) That he has failed to reply to telephone calls and correspondence from clients;
- (vii) That he has failed to comply with a Court Order.

In respect of both clients:-

- (viii) That they have failed to reply to correspondence from the OSS.

In respect of Mr Greenfield:-

- (ix) That he failed to comply with a decision made by the Compliance & Supervision Committee.

In respect of Mr Smithson:-

- (x) That he failed to disclose material information to a client by acting for the vendor, purchaser and lender in the same transaction and failed to inform the lender of that fact;
- (xi) That he accepted instructions to act for two or more clients where there was a significant risk of a conflict of interest.

In respect of both Respondents:-

- (xii) That they have failed to comply with the Solicitors Indemnity Insurance Rules 2000 by failing to pay promptly or at all the premiums payable to the Assigned Risks Pool for the indemnity year 2000/2001.

21. On that occasion the Tribunal said:-

“The overall picture that emerged was one of chaos and muddle. The Tribunal has given credit to the Respondents for their prompt and responsible admissions. Their endeavours, or plans, to put matters right and their contrition.

There must be no doubt as to the great seriousness with which this Tribunal regards a solicitor’s failure to comply with a direction made by his own professional body and failure to comply with the rules of professional conduct. The Tribunal does accept that the Respondents’ failures were not deliberate and that they had felt compelled to undertake work in which they did not have expertise owing to the fact that staff had left the firm. The Tribunal recognises that the Respondents had suffered substantial financial difficulties.

The public is entitled when consulting a firm of solicitors to expect that firm to be run and managed in a well ordered way. The public is badly let down if that proves not to be the case.

The Tribunal has given close consideration to making an order that would interfere with the Respondents’ ability to practise. However taking into account

the fact that the Respondents' failures had not been deliberate and there had been no dishonesty on their part, the Tribunal reached the conclusion that it could mark its severe disapproval of the Respondents' failures by imposing a substantial fine upon each of them.

The Tribunal ordered that each Respondent should pay a fine of £5,000.00 and that they should pay the costs of and incidental to the application and enquiry in an agreed fixed sum, the Respondents' liability for payment of the costs to be joint and several.

The Tribunal recommends to the Law Society that any Practising Certificate granted to either Respondent should be subject to the condition that he practises only in approved employment or in an approved partnership."

22. The Tribunal was dismayed in November of 2003 to find further serious allegations made against the Respondents. The Tribunal noted that Mr Smithson had made a number of admissions. He had to that extent co-operated in the disciplinary proceedings and was to be given credit for that. Mr Smithson suggested that he left the day to day running of the practice to Mr Greenfield. The Tribunal further noted that both the Respondents had been adjudicated bankrupt in November of 2002.
23. Given the seriousness of the allegations found substantiated against the Respondents in 2001 coupled with the seriousness of the allegations found substantiated against both of the Respondents on 4th November 2003 the Tribunal had little difficulty concluding that both Respondents should be struck off the Roll of Solicitors. It was right that the public should be protected from solicitors who behave in the manner of the Respondents. Their failures could serve only seriously to damage the good reputation of the solicitors' profession.
24. The Tribunal further concluded that it was right that the Respondents should pay the costs of and incidental to the application and enquiry. The Tribunal ordered that the Investigation Officer of The Law Society's costs be fixed in the sum of £3,880.48p and that the Applicant's costs be subject to a detailed assessment if not agreed between the parties. The Tribunal made its order for costs on the basis that there should be a joint and several liability of the Respondents.

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

J N Barnecutt
Chairman