

IN THE MATTER OF CHRISTOPHER NOEL BRANSTON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mrs H Baucher
Mrs C Pickering

Date of Hearing: 4th December 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 Rosemary Jane Rollason solicitor and partner in the firm of Field Fisher Waterhouse, 35 Vine Street, London, EC3N 2AA on 2nd June 2003 that Christopher Noel Branston of Barnes, London, SW13 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 against the Respondent were that he had been guilty of conduct unbecoming a solicitor in the following particulars:-

- (i) he failed to deliver to The Law Society an Accountant's Report in respect of his firm, Christopher N. Branston, solicitor, for the period ending 31st March 2000, contrary to Section 34 of the Solicitors Act 1974 (as amended);
- (ii) he failed to deliver to The Law Society an Accountant's Report in respect of his firm, Christopher N. Branston, solicitor, for the period ending 31st March 2001, contrary to Section 34 of the Solicitors Act 1974 (as amended);

- (iii) he failed to apply for his firm to join the Assigned Risks Pool prior to 1st September 2001, contrary to Rule 8 of the Solicitors Indemnity Insurance Rules 2001;
- (iv) he failed to make payment of the Assigned Risks Pool premium in respect of his firm for the year commencing 1st September 2001 contrary to Rule 16 of the Solicitors Indemnity Insurance Rules 2001;
- (v) he failed to have in place qualifying insurance cover in respect of his firm for the period 1st September 2000 to 31st August 2001, contrary to Rules 4 and 5 of the Solicitors Indemnity Insurance Rules 2000;
- (vi) at an inspection of his firm's books of account commenced on 11th April 2002, he was found to have withdrawn client funds in breach of the Solicitors Accounts Rules 1998, resulting in a cash shortage on client account in the sum of £9,640.40.

By a supplementary statement of Rosemary Jane Rollason dated 23rd September 2003 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in the following particulars:-

- (vii) he failed to deliver to The Law Society an Accountant's Report in respect of his firm, Christopher N. Branston, Solicitor, for the period ending 31st March 2002, contrary to Section 34 of the Solicitors Act 1974 (as amended);
- (viii) he failed to deliver to The Law Society an Accountant's Report in respect of his firm, Christopher N Branston, Solicitor, for the period ending 26th June 2002, contrary to Section 34 of the Solicitors Act 1974 (as amended).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th December 2003 when Rosemary Jane Rollason appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent as to the facts. The Respondent handed in during the hearing a letter dated 13th August 2002 from the Manager of the Assigned Risks Pool, a schedule of gross fees and three letters of reference.

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

The Tribunal Order that the Respondent, Christopher Noel Branston of Barnes, London, SW13, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 4th day of December 2003 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,634.87.

The facts are set out in paragraphs 1 to 43 hereunder: -

1. The Respondent, born in 1945, was admitted as a solicitor in 1971 and his name remained on the Roll of Solicitors.
2. The Respondent practised on his own account under the style of Christopher N Branston, Solicitor, from September 1987 until June 2002. The most recent address of the practice was 14 Willow Avenue, Barnes, London, SW3 OLT.

Allegations (i) and (ii)

Failure to deliver two Accountants' Reports for the years ending 31.03.2000 and 31.03.2001

3. On 8th March 2001 The Law Society wrote to the Respondent noting that the Accountant's Report for the period ending 31st March 2000 in respect of his firm Christopher N Branston had not been received. The due date for delivery of the Report (after a two month extension) was 30th November 2000.
4. The letter also pointed out that the Respondent had not applied for his Practising Certificate for the year 2000/2001 and that The Law Society had been informed by the Solicitors Indemnity Fund that there was a default on his payments for the year 1999/2000 of £2,886.02.
4. On 30th July 2001, the OSS wrote to the Respondent informing him that it was investigating his failure to submit the Accountant's Report and that the matter might be referred for formal adjudication.
5. The Respondent replied by a letter faxed from Florida erroneously dated 14th August 2000 stating that he was out of the country until the end of August 2001 and asking for a 14 day extension to reply.
6. On 13th September 2001 the OSS wrote to the Respondent in the absence of receipt of any explanation. He replied on 20th September 2001. By way of explanation for the late delivery of the Accountant's Report for the period to March 2000, he stated that his Accountant was unable to complete the Report in time. Although an extension had been requested, the time limit had again been missed because the Respondent was out of the country and the Accountant was unable to complete the Report without his presence. The Respondent also said that at the time he was in the process of merging his practice with another practice and had envisaged that he would thereafter act as a consultant and that it would not be necessary for him to submit an Accountant's Report. However, he stated that these negotiations had not proceeded and so the Report was still outstanding. He stated that he would arrange with his Accountant to prepare the Report as well as the Report for the subsequent period ending 31st March 2001.
7. The matter was referred for formal adjudication on 14th December 2001. By this point, it had been noted that the Accountant's Report for the period ending 31st March 2001 had also not been submitted. The Adjudicator found that the Accountant's Report for both the periods ending 31st March 2000 and 31st March 2001 were outstanding in breach of Section 34 of the Solicitors Act 1974 (as amended).
8. The Adjudicator resolved to expect the Respondent to deliver the Accountant's Reports within 28 days of the letter notifying him of the adjudication decision, failing which she directed that his conduct should be referred without further notice to the Tribunal. However if the Respondent complied with the decision, the Adjudicator resolved to reprimand him in respect of the late delivery.
9. The OSS wrote to the Respondent on 19th December 2001 informing him of the Adjudicator's decision and of his right to apply for a review.

10. On 8th February 2002 the Respondent wrote to the OSS requesting a further month to provide the outstanding Reports.
11. On 1st March 2002, the OSS wrote to the Respondent stating that his request for an extension would be treated as a request for a review of the Adjudicator's decision. The Review Panel considered the matter on 11th April 2002. They resolved to dismiss the application and to refer the Respondent's conduct to the Tribunal. The Panel noted that, despite the passage of time, the Reports had still not been lodged.
12. The Respondent wrote to the OSS on 18th April 2002. He asked that the Review Panel be informed that it was his intention to retire from practice within the next few months. He stated he had started to wind the practice down and intended to amalgamate it with another firm within the locality before the August deadline. He wished to act as a consultant to the firm, subject to the Review Panel's decision.
13. The matter was reviewed again on 13th June 2002. The Review Panel considered the Respondent's letter of 18th April 2002, but decided that it raised no new issues and they resolved to dismiss the application.

14. The Accountant's Reports in question remain outstanding:

Allegation (iii)

Failure to apply to join the Assigned Risks Pool prior to September 2001

Allegation (iv)

Failure to make payment of the Assigned Risks Pool premium for the year commencing 1st September 2001

Allegation (v)

Failure to have in place qualifying insurance cover for the year 1st September 2000 to 31st August 2001

15. On 14th and 15th March 2002, an Assigned Risks Pool Monitoring Visit was carried out upon the Respondent's practice. The officer conducting the visit noted deficiencies in the firm's indemnity insurance arrangements. A copy of the resulting Report dated 22nd March 2002 was before the Tribunal.
16. On 24th June 2002 the OSS wrote to the Respondent stating that information had been received from the manager of the Assigned Risks Pool ("ARP") leading the OSS to consider that the Respondent may have breached the Solicitors Indemnity Rules 2001. Copies of the relevant correspondence from the ARP were attached. The letter noted that the Respondent applied to join the ARP after 1st September 2001 in breach of Rule 8 of the Solicitors Indemnity Insurance Rules 2001.
17. The proposal form was dated 13th February 2002. The form indicated the date from which cover was sought as 1st September 2000. However, the ARP had issued cover (subject to payment of the appropriate premium) for the period 1st September 2001 to 31st August 2002. The Respondent was therefore now asked to provide details of the indemnity insurance he had in place in respect of his firm for the period from 1st September 2000 to 31st August 2001.

18. The OSS letter also raised the failure by the Respondent to make payment of the premium and to return the completed loan agreement form, despite reminders from the ARP. He had been sent the debit note in respect of the premium by the Manager of the ARP on 27th February 2002. His attention had been drawn to the matter previously in a letter from The Law Society's Registrations Department dated 10th May 2002. His failure to make payment within 30 days of receipt of notification of the premium by the ARP Manager was contrary to Rule 16 of the Solicitors Indemnity Insurance Rules 2001.
19. The Respondent replied to the OSS letter of 24th June 2002 by an undated letter received by the OSS on 3rd July 2002. He acknowledged that he had not applied to join the ARP prior to February 2002. He stated that this was because until January 2002 he was in negotiations with another firm to merge the two practices. He said that he and the other solicitor were "under the impression that if the practices merged, I would be under the umbrella of that firm's indemnity policy". When negotiations broke down he then applied to the ARP for cover in February 2002.
20. In respect of the payments due, the Respondent stated he had made arrangements to pay the arrears, the first payment of arrears having been made on 29th April 2002. He had not paid earlier due to cashflow difficulties.
21. The Respondent accepted that he did not have any qualifying insurance in place in respect of his practice for the period 1st September 2000 to 31st August 2001. He said he had obtained quotes which, in the light of his fee income, were unaffordable and he therefore entered into negotiations to merge his practice with another firm, P & Co. He said negotiations with the other firm's insurers ensued during which time he worked as a consultant. The insurers eventually stated he would not be covered by the other firm's policy unless all the work he did was from their office and he did not remove his files to work on them. The Respondent said he found this unacceptable and ended his association with the firm in February 2001.
22. The Respondent informed the OSS in his letter that he did not intend to apply for a Practising Certificate and had handed ongoing matters to P & Co.
23. The Respondent's Practising Certificate was terminated on 20th June 2002 as he had failed to submit his form RFS12 for the year 2001 to 2002. He was informed of this by letter from Ms H, Registration Manager at The Law Society, dated 20th June 2002. Ms H subsequently wrote on 24th June seeking his explanation in respect of these matters. The Respondent replied in a letter marked as received by the OSS on 4th July.

Allegation (v)

Withdrawal of client funds in breach of the Solicitors Accounts Rules and resultant cash shortage on client account in the sum of £9,640.40

24. Following authorisation an inspection of the books of account of the Respondent's practice commenced on 11th April 2002 at 14 Willow Avenue, Barnes, SW13. The Investigation Officer was Mr AT. A copy of the Forensic Investigation Report dated 28th June 2002 ("the FIU Report") was before the Tribunal together with relevant correspondence.

25. At the inspection the firm's books of account were found not to be in compliance with the Solicitors Accounts Rules.
26. A list of liabilities to clients as at 31st March 2002 totalled £209,679.99. A comparison of cash held on client bank account showed a cash shortage of £10,590.09.
27. In interview on 29th May 2002 the Respondent agreed that a cash shortage of £10,590.09 existed on client bank account as at 31st March 2002.
28. On 12th June 2002 the Respondent provided documentation confirming that an amount of £10,590.09 had been introduced into client bank account from his own resources.
29. The FIU Report identified the cause of the cash shortage as follows:
- | | |
|---|-------------------|
| (i) client funds utilised for office/personal expenditure | £9,640.40 |
| (ii) debit balances (4) | <u>949.69</u> |
| Total | <u>£10,590.09</u> |
30. Mr T identified the cause of the shortage of £9,640.40. He analysed two "suspense" accounts which were in the clients' ledger. They revealed that between 6th August 1999 and 25th March 2002, 56 amounts totalling £15,134.14 had been incorrectly drawn from client bank account.
31. A summary of the suspense accounts showed:
- | | |
|--|------------------|
| Cheques drawn to cash (32) | £9,756.44 |
| Cheques drawn for personal payments (24) | <u>5,377.70</u> |
| | £15,134.14 |
| Less funds introduced | <u>5,493.74</u> |
| Total | <u>£9,640.40</u> |
32. During the inspection the Respondent explained to Mr T that initially his firm had enjoyed a good working relationship with Barclays Bank plc where he maintained both client and office bank accounts. He explained that due to cash flow difficulties he had been unable to make regular payments to a personal loan account also maintained with the bank. Accordingly in 1999 the bank demanded that the loan be repaid in full and they withdrew his office overdraft facility.
33. The Respondent said that he discharged the outstanding liabilities to the bank at that time totalling approximately £800. Both his office and personal accounts were closed. He said the bank allowed him to retain the client account for a further year after which they asked him to close this account. He then moved the practice's finances to Cater Allen Bank Limited.
34. The Respondent explained during the inspection that following the closure of his office bank account in 1999 he had adopted the practice of withdrawing costs direct from client account. These would either be in the form of cheques payable direct for

office expenditure or, on a number of occasions, by withdrawing cash direct from client account.

35. At a meeting on 29th May 2002 Mr T explained to the Respondent that under the Solicitors Accounts Rules costs due to the firm could not be removed from client account by this method. Accordingly a client account shortage of £9,640.40 existed as at 31st March 2002.
36. On 18th July 2002 the OSS wrote to the Respondent seeking his explanation of the matters raised in the FIU Report.
37. The Respondent replied by letter faxed from Florida dated 31st July 2002. He accepted that the withdrawals were incorrectly made but stated that in each case only monies due to him in respect of costs were withdrawn.
38. The Respondent further asked the OSS to note that he was no longer practising as a solicitor and did not intend to apply for a Practising Certificate in the future.
39. On 29th August 2002 a Director of the OSS authorised the inclusion of matters arising from the FIU Report of 28th June 2002 together with the matters in relation to indemnity insurance and practising certificate termination to be included in the disciplinary proceedings concerning the Respondent.

Allegations (vii) and (viii)

Failure to deliver two Accountant's Reports for the periods ending 31.03.02 and 26.06.02

40. The Respondent's Accountant's Report for the period ending 31st March 2002 was due to be delivered to The Law Society on or before 30th September 2002. The Accountant's Report for the period ending 26th June 2002 was due to be delivered to The Law Society on or before 26th December 2002. Neither Report has been received.
41. The OSS wrote to the Respondent on 11th July 2003 to inform him that The Law Society's records indicated that these Reports were outstanding.
42. The Respondent telephoned the OSS on 12th July 2003 leaving a message for the OSS Caseworker to contact him. Attempts to contact the Respondent on several occasions were unsuccessful and it was understood that the Respondent might be abroad in Florida.
43. On 29th August 2003 the additional allegations were authorised for inclusion in the existing proceedings before the Tribunal.

The Submissions of the Applicant

44. The Respondent had admitted the factual allegations but would dispute that he was guilty of conduct unbecoming a solicitor.
45. The Respondent's Practising Certificate had been terminated in 2002 and he had retired from practice and had indicated that he had no wish to return.

46. In relation to the Accountant's Reports the Tribunal was asked to note that none of the four outstanding Reports had been filed. There had clearly been a pattern of the OSS writing to the Respondent, extensions being granted and some failure of the Respondent to reply to correspondence but ultimately the requirements had not been met.
47. It was clearly the requirement of Section 34 of the Solicitors Act that Reports had to be supplied by every solicitor. This was a very important part of the regulation of the profession as it was a means of monitoring the handling of clients' money. The Respondent had been given leeway by way of extensions but he had disregarded this important regulatory requirement.
48. With regard to the indemnity insurance the Respondent had eventually confirmed that there had been no insurance arrangements in place for the period from September 2000 to August 2001. Allegation (iv) related to the subsequent year for which the Respondent had ultimately paid the premiums but not within the 30 days provided for in the Rules.
49. There was clearly a requirement for solicitors to have in place appropriate indemnity insurance cover, indeed this was a vital requirement for most professions. Such cover had been compulsory for solicitors since 1976 and was essential for the protection of the public and the maintenance of public confidence in the profession.
50. The statutory provisions recognised that failure in this regard could be a disciplinary offence.
51. In relation to allegation (vi) the Respondent's practice of withdrawing costs direct from client account was in breach of Rules 22(1) and 23(3) of the Solicitors Accounts Rules 1998. The Respondent had acknowledged that such withdrawals were incorrect. He would say that no client had suffered loss. There had however been clear breaches of the Rules. Although the Respondent had been a sole practitioner since 1987, he seemed to be unaware of the Rules. The Rules were there for good reason, namely to ensure the proper handling of and the protection of clients' monies.
52. In summary the Respondent had not filed any Accountants' Reports since 1999, he had not had proper or timely insurance for the period set out in the allegations and he had misused his client account. While no dishonesty was alleged there were clear breaches and a clear disregard of the requirements of solicitors.

The Submissions of the Respondent

53. The Respondent accepted the facts as set out the Rule 4 statement subject to confirming that he had paid the premiums referred to in allegation (iv) and that in relation to the breaches of the Accounts' Rules, all monies had been replaced by the Respondent when the matter had been brought to his notice and no client had suffered loss.
54. In relation to the Accountants' Reports the problem had originally been with the Respondent's Accountant who had made it almost impossible to submit the Reports in

a timely fashion. The Tribunal was referred in this regard to the Respondent's letter of 20th September 2001 to The Law Society in which he had written:-

"I am anxious to put matters to right and should like to [sic] guidance as to what is required. If it is necessary for an accountant's report to be submitted (as I assume to be the case) then I will arrange for my accountant to prepare one for the period in question as well as for the period ending 31st March 2001."

55. The Respondent had brought this letter to the attention of the Tribunal to show that he had tried to cooperate. He had had little or no guidance from The Law Society but simply an adversarial request to submit to various timeframes. He had contacted a solicitor on one of the Panels but did not receive any help.
56. He regarded his failure in respect of the Reports as important and accepted that the submission of Reports was an essential part of any practice. He had been prepared to submit the Reports provided he was given time to do it.
57. The issue had been clouded by the Respondent's two attempts to merge his practice. He had been told that the other firm's insurance would cover him but had then been told that he would only be covered if he worked at their office which was not acceptable to him.
58. In relation to the ARP the Respondent had asked for cover from September 2000 albeit he had asked for this cover late. The Respondent submitted a letter from the manager of the ARP dated 13th August 2002 which said that his firm had had cover with the ARP continuously since 1st September 2000. That had led him to believe that cover was in place for the period 2000 – 2001 but subsequently he had been told that this was not the case. This seemed to be an error on the part of the ARP which had not been properly explained to him.
59. He had applied to the ARP because the quotes he had received in August 2000 were greatly in excess of what he could afford. The Respondent submitted to the Tribunal a list of his gross fees for the relevant period.
60. The Respondent hoped that the Tribunal could see that he had not simply ignored matters. He had applied for cover and had believed it to exist.
61. The Respondent accepted that he had committed breaches of the Accounts Rules. His bookkeeper had been extremely good and had been well aware of the Rules.
62. His understanding had been that provided bills had been rendered he could withdraw costs from client account whether in cash or otherwise. He now understood that he had breached the Rules but all the payments had been made against delivered bills.
63. There had been no loss to clients whatsoever.
64. The FIU Report had referred to £2,700 supposedly owed to clients. The Inspector had identified that this related to a conveyance where a client had paid the initial part of the deposit himself. As soon as this had been discovered the Respondent had paid

the sum owing. The client had been an experienced tax barrister who, like the Respondent, had not realised that he was owed the sum of £2,700.

65. Towards the end of his period in practice the Respondent's fees had been going down considerably as a number of commercial clients went elsewhere.
66. The Respondent submitted three letters of reference to the Tribunal.
67. The Respondent accepted the complaints against him. If they were proven he accepted that they might amount to conduct unbecoming a solicitor.

Further Submissions by the Applicant

68. The Applicant had not seen the letter of 13th August 2002 until the hearing. She submitted that the reference in the letter to cover since September 2000 might refer to the default cover arrangements provided by the ARP. The letter had clearly been written after the visit of the ARP when correspondence was already in place. In relation to year 2001-2002 the Respondent had applied late and was late with the premiums but had eventually paid. In relation to the year 2000 to 2001 he had never arranged cover.
69. Where solicitors did not arrange cover the default arrangements would be put in place.

Further Submissions of the Respondent in Mitigation

70. After the finding of the Tribunal as to liability the Respondent submitted in mitigation that the breaches had happened in many instances as a result of lack of cashflow.
71. There was an onerous burden on any sole practitioner to comply with all the Rules in their entirety. The Respondent had been willing to cooperate.
72. The most important aspect was that no client had suffered as a result of the breaches and there had been no dishonesty by the Respondent. All of the Respondent's clients had been very supportive and there had been no seriously dissatisfied client.
73. The Respondent agreed the Applicant's fixed costs.

The Findings of the Tribunal

74. The Respondent had admitted the facts which formed the basis of the allegations and the Tribunal found the allegations to have been substantiated. In the view of the Tribunal these were serious allegations which amounted to conduct unbecoming a solicitor.
75. It was accepted that no dishonesty had been alleged against the Respondent and none had been found. No client had lost money. There had however been serious breaches of the Accounts Rules and despite the length of the Respondent's practice as a sole practitioner he appeared to have had no idea of the relevant Rules.

76. He had not applied at the appropriate time for cover for the year 2000-2001 and had never paid a premium for that period. The fact that he was then covered under the default arrangements did not lessen the seriousness of a solicitor practising without insurance. He had admitted that he had not arranged insurance because he could not afford the premiums. The premiums in respect of the subsequent period had been paid late.
77. The Respondent was in continuing breach of the Rules relating to the submission of Accountants' Reports. Those Rules were there for the protection of the clients and it was essential that solicitors comply with them. Given the seriousness of the allegations and the continuing breach referred to, it was not appropriate that the Respondent practised as a solicitor. The protection of the public was paramount and the regulatory framework with which the Respondent had failed to comply was a vital part of that protection. The appropriate penalty was an indefinite suspension.
79. The Tribunal ordered that the Respondent, Christopher Noel Branston of Barnes, London, SW13, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 4th day of December 2003 and they further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,634.87.

DATED this 23rd day of February 2004

on behalf of the Tribunal

S N Jones
Chairman