

IN THE MATTER OF STEPHEN ERIC DEARDEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R B Bamford (in the chair)
Mr A Gaynor-Smith
Mr D E Marlow

Date of Hearing: 6th January 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Peter Harland Cadman, Solicitor and Partner in the firm of Russell Cooke of 8 Bedford Row, London WC1R 4BX on 25th June 2003 that Stephen Eric Dearden, Solicitor of Kersall Street, Liverpool, Merseyside, 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 unbefitting a solicitor in each of the following particulars, namely:-

- (a) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 the Respondent failed to keep accounts properly written up.
- (b) that contrary to Rule 34 of the Solicitor Accounts Rules 1998 the Respondent failed to produce records, papers, files, financial accounts, documents and other information to the investigating accountant.
- (c) that he had been responsible for unreasonable delay in dealing with clients' affairs and/or professional business.

- (d) that he had failed to deliver and/or had delivered late his accountant's reports.

By a supplementary statement of Peter Cadman dated 10th February 2004 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (e) that he failed to comply with and/or breached conditions on his practising certificate.
- (f) that he transferred monies from client account to office account, other than as permitted by Rule 22 Solicitors Accounts Rules 1998.
- (g) that he utilised clients' funds for his own purposes.

The matter came before the Tribunal for a substantive hearing on 6th January 2005 and was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London EC4M 7NS when Peter Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

Application for an Adjournment

By a letter of 15th December 2004 the Respondent had sought an adjournment of the substantive hearing on the grounds of ill health. Following a letter from the Tribunal Clerk dated 3rd December 2004 stating that the Tribunal was unwilling to grant an adjournment on health grounds without a Consultant's Report, the Respondent had seen his GP who had referred him to a Consultant. The Respondent wrote that it would not be possible to see a Consultant before the date listed for the substantive hearing. A letter dated 24th December 2004 from the Respondent's GP confirmed the referral to a Consultant Psychiatrist.

The Submissions on behalf of The Law Society

Mr Cadman submitted to the Tribunal a bundle of correspondence dated between 6th October 2003 and 15th December 2004 regarding the Respondent's ill health. Mr Cadman had written to the Respondent on 17th November 2004 enclosing a copy of the Tribunal's policy/practice note in relation to adjournments and drawing his attention to the need for appropriate medical evidence. In Mr Cadman's submission the Respondent had not provided sufficient evidence to justify a further adjournment. The Respondent had not been receiving Consultant treatment. Mr Cadman was in a position to prove the allegations and had a witness present and submitted that the matter should proceed. The Respondent was not practising. As the Respondent was not present it was open to him to request a re-hearing of the matter.

The decision of the Tribunal in relation to the application for an adjournment

The Tribunal considered carefully the Respondent's Application and the correspondence relating to his ill health including the various letters from his General Practitioner. The Tribunal noted that as long ago as 8th October 2003 the Respondent had been informed by the Clerk that the Tribunal would normally require a full medical report including a detailed prognosis before granting an adjournment.

The Tribunal took due note of the short reports before it from the Respondent's GP, the most recent of which was dated 28th September 2004 but the Respondent had at no time since the Proceedings were instituted provided a detailed medical report from an appropriate Consultant with full prognosis. The Respondent had, somewhat belatedly, sought a referral to a Consultant in order to obtain a report but the Tribunal noted that he was not currently receiving treatment from a Consultant. The Tribunal had to balance fairness to the Respondent with its duty to the public to ensure that serious allegations against solicitors were heard expeditiously. The Supplementary Statement was dated 10th February 2004. The original proceedings had been adjourned from December 2003 and there had been a further adjournment in March 2004. In the absence of persuasive medical evidence from the Respondent the Tribunal considered it right that the matter should proceed in the public interest. The Respondent's application for an adjournment was refused.

The Substantive Hearing

The evidence before the Tribunal included the admissions of the Respondent to allegations (a) to (d) and the oral evidence of Mr Back.

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

The Tribunal Orders that the Respondent, Stephen Eric Dearden of South Drive, Upton, Wirral, solicitor be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,495.96.

The facts are set out in paragraphs 1 to 14 hereunder:-

1. The Respondent born in 1956 was admitted as a solicitor in 1980 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 Deardens, Equity & Law House, 47 Castle Street, Liverpool L1 9UB.

Allegations (a) to (d)

3. Upon due notice to the Respondent The Law Society carried out an inspection of the Respondent's books of account commencing on 14th October 2002. A copy of the resulting Report dated 13th November 2002 was before the Tribunal. The Report noted the matters set out below.
4. The Books of Account were not in compliance with the Solicitors Accounts Rules. At the commencement of the inspection the Respondent said that he could not produce the books and records as they were not on the premises. He said that they were with his wife who carried out the book-keeping work for the firm and that although she had moved to Devon in early 2002 she assured him that she would continue to maintain the books and records.

5. Mrs Deardon was contacted on 14th October 2002 and said that she would arrange to send the books and the last client reconciliation, that for 30th September 2002, to the firm. On 15th October 2002 the Respondent informed the Investigation Officer that Mrs Deardon had admitted to him the previous evening that she had not been maintaining the books and records nor carrying out client reconciliations. The Respondent said that this was a complete shock to him and that he had relied on her to do the book-keeping but accepted that responsibility rested with him and that he had not queried the absence of monthly reconciliations.
6. The Report at paragraphs 12 to 32 showed delays in professional conduct with particular reference to delays in the redemption of clients' mortgages. The Respondent accepted that in eight matters there had been delays in redemption of between one and nearly three months. Two of the eight matters were exemplified in the Report, that of Mr B relating to a delay in the redemption of a mortgage in the sum of some £27,500.00 for a month after completion and that of Mr F where a mortgage in the sum of some £48,900.00 was redeemed on 6th September 2001, completion having taken place on 22nd June 2001.
7. The Respondent accepted that the delays were poor practice but said that the problems were not necessarily all due to the fault of the firm, citing delay by the mortgagees themselves and postal delays in December 2001.
8. Following the Report correspondence was exchanged between the Respondent and the then Office for the Supervision of Solicitors and the correspondence was before the Tribunal.
9. The Respondent's firm's Accountant's Report for the period ending 31st May 2002 was due for delivery on 30th November 2002. The Report was not delivered.
10. The matter was considered by an Adjudicator on 11th March 2003 who resolved to refer the matter to the Tribunal. On 15th April 2003 the inclusion of allegation (d) in the matters already referred to the Tribunal was authorised.

Allegations (e) to (g)

11. The Compliance Board Adjudication Panel Review Section on 17th September 2003 upheld the decision of the Adjudicator of 11th March 2003 to intervene in the Respondent's practice and to further refer his conduct to the Tribunal.
12. The Respondent's Practising Certificate for the years 2002/2003 was subject to the following conditions:-
 - "(a) That he may act as a solicitor only in employment which is approved by the Office for the Supervision of solicitors in connection with the imposition of that condition, or as a member of a partnership which is so approved and that he is not an office holder and/or shareholder of an incorporated solicitors' practice without the prior approval of the Office;

- (b) Any employer or prospective employer, partner or prospective partner, co-officeholder or prospective co-officeholder, or shareholder or prospective shareholder will be informed of his condition.
 - (c) That should Mr Dearden hold, receive or handle client monies, he file half yearly Accountant's Reports to be delivered within two months of the end of the period to which they relate.
 - (d) Condition (a) will come into effect three months from the date of notification of this decision and conditions (b) and (c) have immediate effect."
13. The Respondent, however, continued in private practice in breach of the conditions. In a letter from the Respondent to The Law Society dated 7th July 2003 the Respondent said that it had been brought to his attention that day that he was in breach of the conditions attached to his Practising Certificate. He said he had not realised that the time had elapsed but was in an advanced stage of negotiation for the disposal of his practice. In a letter dated 1st September 2003 to The Law Society the Respondent said that he had retired from practice due to ill health on 31st August 2003.
14. Messrs Hill Dickinson were appointed as intervening agents on behalf of The Law Society as a result of the resolution referred to in paragraph 11 above. The firm prepared a report dated 15th January 2004. That report established the following:-
- (i) The books of accounts of the firm were not properly written up, contrary to Rule 32 of the Solicitors Accounts Rules 1998.
 - (ii) There were unallocated transfers at the time of the intervention of £2,909,266.93. However, because of the accounting work undertaken by the intervening agents, that figure had been reduced to a figure of £796,925 (appendix 2 of the report).
 - (iii) The accounting records of the Respondent contained errors and duplications. The total of these discrepancies amounted to £336,103.17 (appendix 3 of the report)
 - (iv) The books of accounts showed transfers from client account to office account which were not substantiated by the bills rendered.
 - (v) There were a number of unredeemed mortgages in a total amount of £1,295,372.48 (appendix 6 of the report).

The Submissions of the Applicant

15. The Respondent had admitted allegations (a) to (d) on his pre-listing questionnaire sent to the Tribunal. The relevant documents had been properly served upon the Respondent. He had not replied to the Applicant in respect of the Supplementary Statement but a Notice to Admit Documents had been served upon him. In relation to

allegations (e) to (g) the Respondent would rely on the oral evidence of Mr Graeme Back.

- 16 The Tribunal was asked to note that the sum of some £1,259,000.00 had been paid by the Compensation Fund in respect of the Respondent's practice.
- 17 In relation to matters contained in the Rule 4 Statement allegations (a) and (b) were the most serious. The Respondent's explanation that the papers were with Mrs Dearden in Devon demonstrated a total abrogation of his responsibility as a sole principal. His explanation was unacceptable. His failure of responsibility had taken place over a considerable period of time. The Tribunal was asked to note paragraph 32 of The Investigation Accountant's Report. There had been no monthly reconciliation in June 2001.
18. The Respondent's failure to comply with the conditions on his practising certificate had led to an intervention by The Law Society. This was a serious matter. The Law Society had an obligation to regulate solicitors and had had good reason to impose conditions on the Practising Certificate.
19. In relation to allegations (f) and (g) the Tribunal was referred to the report of the Intervention Agents dated 15th January 2004. The Intervention Agents had attempted unsuccessfully to recreate the books of accounts. Their report showed that monies were transferred improperly into office account and that those monies had been utilised by the Respondent.

The Oral Evidence of Mr Back

20. Mr Back said that he was a Chartered Accountant employed by Hill Dickinson solicitors, the Intervention Agents in this matter. He confirmed that his Report of 15th January 2004 was true.
21. The books and records of the firm had been in a very disorganized state with information missing. At the date of the Intervention there had been some £100,840.00 in client account and some £1.3million of unredeemed mortgages.
22. The last reconciliation had been July 2002.
23. The Respondent had appointed a book-keeper JS. Mr Back had spoken with JS who had said that the Respondent was notoriously bad at providing information quickly or at all. The Respondent would send a bundle of papers to JS who would then send a list of queries but the Respondent's response had been variable.
24. It was difficult without full records to establish where the missing money had gone. The Intervention Agents had looked at the client to office transfers. There had been some £700,000 which it had not been possible to tie in with matching bill values.
25. Eventually, the Intervention Agents had taken the view that they had done all that they reasonably could and that further work would not clarify the position further. The Law Society had then taken back the client account.

The Findings of the Tribunal

26. The Tribunal found allegations (a) to (d) substantiated, indeed they were not contested. With regard to allegations (e) to (g) the Tribunal had considered carefully the unchallenged documentation and in particular the report of Messrs Hill Dickinson and the correspondence from the Respondent and were satisfied that the allegations were substantiated.
27. The Tribunal considered the Respondent's attitude towards his accounts to be one of total irresponsibility. He had relied on his wife, who had moved away, to carry out the book-keeping work for the firm without making any enquiries as to why no reconciliations were being received. As a result of the reprehensible failure of the Respondent to take control of his accounts there had been huge cost to the profession and to the Compensation Fund. The Intervention Agents had been unable to establish the true position regarding the accounts due to the chaotic state of the books and records. Clients were entitled to expect that money entrusted to their solicitors would be subject to the highest standards of stewardship. Given the Respondent's grave failures in this regard, in the interests of the public and in the interests of the reputation of the profession the Respondent could not be allowed to continue to be a member of the profession. It was also right that the Respondent pay the Applicant's costs.
28. The Tribunal Ordered that the Respondent, Stephen Eric Dearden of South Drive, Upton, Wirral, be struck off the Roll of Solicitors and they further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,495.96.

DATED this 21st day of February 2005

On behalf of the Tribunal

R B Bamford
Chairman