

IN THE MATTER OF PAUL HAMPSON

A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. John R C Clitheroe
Mr. I R Woolfe
Mrs. S Gordon

Date of Hearing: 30th October 2003

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society on 2nd July 2003 by Iain George Miller that an Order be made by the Tribunal directing that as from a date to be specified in such Order no solicitor shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Paul Hampson of Formby, Merseyside a person who was or had been a clerk to a solicitor, or that such other Order may be made as the Tribunal shall think right.

The allegations were that the Respondent had as an employee of a solicitor been guilty of such conduct that an order pursuant to Section 43 (2) of The Solicitors Act 1974 ought to be made against him. The particular allegations were:-

- a) That he failed to inform both his clients and/or his employer of the fact that he mistakenly accepted a payment into Court on behalf of the wrong client, and
- b) He took steps to conceal the mistake in a) above from his clients and/or his employer.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Iain George Miller appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal

The Respondent had written to indicate that he no longer was employed within the solicitors' profession and that he did not intend again to be so employed. He wished to take no part in the proceedings.

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

The Tribunal order that as from the 30th day of October 2003 no solicitor shall, except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Paul Hampson of Formby, Merseyside, a person who is or was a person employed or remunerated by a solicitor in connection with his practice but is not himself a solicitor.

The facts are set out in paragraphs 1 to 7 hereunder: -

1. Since approximately 1989 the Respondent had been employed as a legal clerk. Between July 1993 and early 1997 the Respondent was employed by the firm of Michael W Halsall. The Respondent left the firm to work for another firm of solicitors. He had since left that other firm's employment.
2. The Respondent acted for Mrs D and her son, Mr D whilst employed by Michael W Halsall.
3. Mrs D had been the driver of a motor vehicle which was stationary at a roundabout when a lorry struck her from behind causing whiplash and back injuries. Her passenger was her son Mr D who also suffered whiplash injuries. Both mother and son instructed Michael W Halsall and the Respondent had responsibility for the case.
4. Court proceedings were instituted on behalf of Mrs D in February 1995 and notice of payment into Court was received on or after March 1995. The payment into Court was £1,280. On 3rd April 1995, the Respondent wrote to Mr D seeking his instructions on the offer. Mr D agreed to accept the payment and it was accepted on 10th April 1995. £1,280 was received into the firm's client account on 13th April 1995, and a cheque for this amount was drawn on client account and sent to Mr D on 18th April 1995. As the only proceedings in existence at the time were those in connection with Mrs D, a clear mistake had been made by the Respondent.
5. It was not clear when the Respondent realised his mistake. It was clear that once he realised his mistake rather than informing his client and his employers the Respondent attempted to cover up his mistake.
6. The Respondent continued to negotiate with the third party insurers, Eagle Star, in respect of Mr D's claim. An offer of £2,000 was made by Eagle Star in respect of this

claim on 18th September 1997 and the offer was accepted by the Respondent without Mr D's consent. The Respondent proceeded to settle the question of costs at £894.31 inclusive. The total amount of £2,894.31 (being the agreed damages plus costs) was paid into the firm's client account on 3rd October 1995. A further amount of £1,335.94 was recovered in respect of Mrs D's costs. The total funds received, being £4,230.25, were then used to fund medical disbursements in respect of Mrs D's case. She was not aware that her case had already been settled.

7. During the course of acting the Respondent wrote to Mr D on 26th September 1995. This letter advised Mr D that he had secured £2,000 in damages. Mr D questioned the terms of this letter (having already been advised his claim had been settled) and was advised by the Respondent to destroy the letter. The file copy of the letter was destroyed.

The submissions of the Applicant

8. Having made a mistake, the Respondent failed to inform either his employer or Mrs D and Mr D. In addition, the Respondent continued to give the impression that Mrs D's case was being pursued.
9. The case was put on the basis that whilst the allegations related to only one file, it was sufficiently serious to require an order regulating the future employment of the Respondent within the solicitors' profession.
10. The Applicant drew the attention of the Tribunal to the delay in bringing this matter before it. The initial complaint was received by the OSS in August 1997. Following investigation a decision was taken on 29th September 1999 to refer the Respondent's conduct to the Tribunal. However the file was, in error, archived within the OSS rather than being forwarded to the appropriate department for proceedings to be taken. When the mistake came to light in 2002 the matter was reconsidered by the Adjudication Panel at the OSS which, in turn, led to the present proceedings being brought.

The submissions of the Respondent

11. In a letter addressed to the OSS dated 22nd September 1999 Quinn Melvilles solicitors representing the Respondent said that the Respondent accepted his responsibility. That letter set out what had happened in the case of Mrs D and Mr D in some detail. The payment into Court had referred only to the surname D and in error that payment into Court had been treated as being on behalf of Mr D. The Respondent believed that the mistake came to light only some months later and it was at that stage that the Respondent made a mistake which he very much regretted. He had come to realise with hindsight that he should have immediately reported the matter to a partner and made the appropriate application to the Court to rectify the mistake as well as to have advised the clients. Instead he believed at that stage that Mrs D's claim was nowhere near as serious as later transpired and he thought in due course an offer would be made in respect of Mr D's claim which would adequately compensate her. What he had hoped to do was to use the costs which he brought in on both files to make up any difference for Mr D and also obtain Counsel's advice that the offer for Mr D would be a reasonable one to be used to pay Mrs D. He would then have gone to a partner to

explain what he had done and hoped that the matter could then be rectified without any further problem.

12. The Respondent accepted that a letter appeared to have been removed from the file although it had to be said that the Respondent had kept a note on the file of his conversation with Mr D in which Mr D was advised to rip up the letter as it had been sent in error.
13. The D files were kept with all of the other files for which the Respondent had been responsible and no attempt had been made to conceal them.
14. It should be noted that the Respondent's employers at the time supported him and had not formulated any criticism of his otherwise excellent work.

The findings of the Tribunal

15. The Tribunal found the allegations to have been substantiated, indeed they were not contested. It is absolutely essential that any person employed by a solicitor, bearing in mind that he or she is entrusted to handle matters on behalf of clients, must behave in a completely honest and open way. Such a person can be criticised for making a mistake and it has to be recognised that errors do occur from time to time. The proper way to deal with such an error is immediately to refer it to a partner or appropriate supervisor for steps to be taken to put matters right and inform the clients where that is appropriate. It was accepted by the Tribunal that the Respondent had enjoyed a hitherto unblemished career as a legal clerk and complaint had arisen only in respect of the matter before the Tribunal, which in any event demonstrated somewhat unusual circumstances. The way in which the Respondent behaved in this matter was not acceptable and it was right that the order sought should be made so that any future employment by him within the solicitors' profession might be subject to the consent of The Law Society.
16. In view of the inordinate delay in bringing this matter to the Tribunal the Tribunal did not consider it right to order the Respondent to pay the Applicant's costs. The Tribunal therefore made no order as to costs.

DATED this 22nd day of December 2003
on behalf of the Tribunal

Mr J R C Clitheroe
Chairman