

IN THE MATTER OF FREDERICK DENNIS WOOD, solicitor

AND

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr R B Bamford
Mrs V Murray-Chandra

Date of Hearing: 28th October 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 Gerald Malcolm Lynch Solicitor Consultant with Drysdales, Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex, SS2 6HZ on 3rd July 2003 that Frederick Dennis Wood whose address for service was Kilmalcolm Close, Prenton, 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:

- (1) acted in breach of the Solicitors Accounts Rules 1998 in the following particulars
 - (a) contrary to Rule 32 failed to maintain accounting records as by the said Rule required and as hereinafter appears;
 - (b) contrary to Rule 23 withdrew from clients account for his own benefit monies other than in accordance with the provisions of the said Rule and as hereinafter appears;

- (c) contrary to Rule 19 withdrew from client account in respect of payment of his costs monies other than in accordance with the provisions of the said Rule and as hereinafter appears.

(2) By virtue of the aforementioned has been guilty of conduct unbecoming a solicitor.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 28th October 2003 when Gerald Malcolm Lynch appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included a letter addressed by the Respondent to the Tribunal dated 22nd October 2003, which is set out below under the heading "The Submissions of the Respondent".

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

The Tribunal Order that the Respondent, Frederick Dennis Wood of Kilmalcolm Close, Prenton, solicitor, be Struck Off the Roll of Solicitors and they further order that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £3,772 inclusive.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. At all material times the Respondent was in practice on his own account under the style of F D Wood at 124a Allport Road, Bromborough, Wirral, Merseyside, CH62 6AQ. He was aged sixty three years and was admitted as a solicitor of the Supreme Court in 1964.
2. Pursuant to formal notification a Forensic Investigation Officer (the FIO) of the Law Society inspected the books of account of the Respondent starting on 7th December 2002. The FIO's Report dated 9th January 2003, was before the Tribunal. The Report revealed the following matters.
 - (a) The books of account were not in compliance with the Solicitors Accounts Rules as no accounting records in respect of the Respondent's firm's dealings with office monies relating to any client matters and client designated deposit account monies had been maintained. In view of the bookkeeping deficiencies the FIO was not able to express an opinion as to whether or not the Respondent's liabilities to clients were matched by funds held on client account.
 - (b) During the period 8th February 2002 to 18th November 2002, fourteen cash withdrawals, varying in amounts between £52.46 and £757.39 and totalling in all £4,871.41, had been made by the Respondent from client account.
 - (c) There was no evidence in the files relating to a certain probate matter of interim or final estate accounts being delivered to beneficiaries or bills of costs being raised and delivered or retained on file, despite the transfer of costs. Particulars of three probate matters were quoted by the FIO. In two cases the Respondent had been the sole executor and in one case he had been one of two joint executors. The costs charged were £5,875 in May 1999, £4,700 in May

2001 and £4,700 in September 2001. When these costs transfers were queried by the FIO, the Respondent said that as far as he was concerned they were all agreed fees.

3. On 11th February 2003, the OSS wrote to the Respondent for explanation.
4. The following responses were made by the Respondent.
 - (i) By letter of 24th February 2003 he indicated that he would get his bookkeeper to liaise with his accountants to bring the bookkeeping up to date and a suggested reimbursement of client account in the sum of £3,689.79. In respect of one of the quoted probate matters, the beneficiaries had requested a remuneration certificate in any event.
 - (ii) On 27th March 2003 the Respondent said he had made payment into client account of £4,871.41 and would undertake a review of all relevant files. The Respondent gave personal details and explained difficulties from which he suffered.
 - (iii) On 1st April 2003 the Respondent sent a printout of the entries on client account showing a nil balance.
5. The matter was considered by the Adjudication Panel of the OSS on 21st May 2003 when it was resolved to intervene into the Respondent's practice and to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

6. Rule 32 of the Solicitors Accounts Rules 1998 provides that accounting records must be kept by a solicitor to show his dealings with client money received, held or paid and controlled trust money received, held or paid or any office money relating to any client matter. All dealings with client money must be appropriately recorded in a client cash account or equivalent record and on the client's side a separate client ledger account for each client. If separate designated client accounts are used, a combined cash account must be kept to show the total amount held in separate designated client accounts and a record of the amount held for each client must be made either in a deposit column of a client ledger account or on the client's side of a client ledger account kept specifically for a separate designated client account for each client. Finally, all dealings with office money relating to any client matter or to any controlled trust matter must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.
7. Rule 23(3) of the Solicitors Accounts Rules 1998 provides that a withdrawal from a client account in favour of a solicitor or the practice must be either by way of a cheque to the solicitor or practice or by way of a transfer to the office account or to the solicitor's personal account. The withdrawal must not be made in cash.
8. Rule 19(2) of the Solicitors Accounts Rules 1998 provides that the solicitor who properly requires payment of his or her fees from money held for the client or

controlled trust in a client account, must first give or send a bill of costs or other written notification of costs incurred to the client or the paying party.

9. The Applicant confirmed that the Respondent had been co-operative in the investigation and the disciplinary proceedings.

The Submissions of the Respondent

10. “With reference to my earlier letter in this matter I would like to preface any remarks I make in this letter to confirm that I did suffer massive heart failure and am currently under medical advice with severe depression.

Frankly my immediate reaction was to ignore the whole issue as the Intervention in my opinion was tantamount to a crucifixion all subsequent dealings being by way of post mortem.

However as this could be construed as either cavalier or downright rude I am writing this brief letter with I trust some valid points.

Firstly for valid reasons (e.g. health/financial predicament I will not be able to attend the hearing or indeed afford any representation).

Secondly I trust you have been made aware of my full co-operation with both the Forensic Investigation and with the solicitors dealings with the actual Intervention itself.

Thirdly I would wish to draw to your attention that despite dealing with millions and millions of pounds of clients’ money under my sole care and control (since 1975) there has never been any suggestion of either fraud/theft/money laundering or the like and that my offence(s) such as they are relate to no more than minor breaches of an ever increasing number of rules and regulations.

The final irony is that you must of necessity remove my name from the Roll to justify the Intervention despite the above or any other circumstances mitigating or otherwise.”

The Findings of the Tribunal

11. The Tribunal find the allegations to be substantiated, indeed they were not contested.
12. In 1992 the following allegations were found to have been established against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:
 - (a) contrary to rule 8 of the Solicitors Accounts Rules 1986 drawn money out of a client account other than as permitted by Rule 7 of the said Rules;
 - (b) delivered late an Accountant’s Report notwithstanding the provisions of Section 34 of the Solicitors Act 1974.

13. In 1992 the Tribunal said:-

“The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Tribunal had taken note of the bundle of testimonials placed before them, the referees all spoke very highly of the Respondent. The Respondent clearly had been confronted with a very difficult situation. As soon as he recognised the effect a reduction in instructions would have on his firm he took immediate and impressive action to reduce his staff. It was unfortunate that the action which he took turned out to have been somewhat miscalculated. The Tribunal further noted that the Respondent had done what he could to put matters right. The Respondent had been well supported by members of the legal profession practising in his locality and it was clear that the Respondent gave a useful service to the community in which he worked. However, the Tribunal cannot condone the failure on the part of a solicitor to maintain full and accurate accounts and to deliver Accountant’s Reports on time. The Tribunal must take note of the very late delivery of the Respondent’s Accountant’s Reports. The Tribunal accept that the Respondent had done everything possible to put matters right and no client had suffered loss, however, failure to maintain proper and clear accounts and to submit Accountant’s Reports were very serious failures and the Tribunal ordered that the Respondent pay a fine of £1,500 such penalty to be forfeit to Her Majesty the Queen and further ordered that he do pay the costs of and incidental to the application and enquiry, to include the costs of the Investigation Accountant of the Solicitors Complaints Bureau, such costs to be taxed by one of the Taxing Masters of the Supreme Court.”

14. The Tribunal was dismayed in 2003 to discover that the Respondent had appeared before the Tribunal twice in the space of a decade to have allegations of breaches of the Solicitors Accounts Rules substantiated against him. The Respondent appeared not to have learnt a lesson from the warning implicit in his earlier appearance. The Tribunal noted that the Respondent had already been fined in connection with earlier breaches and the Tribunal did not consider in the light of the current breaches substantiated against the Respondent that it was in any position to exercise leniency.
15. Breaches of the Solicitors Accounts Rules are a serious matter. There was a basic and fundamental importance in solicitors keeping detailed proper accounts in accordance with the Rules, which were able to be inspected and to ensure that any fraud could be detected. If proper records are not kept the Law Society is prevented from exercising its duty as a regulator and is prevented from being able to ascertain whether or not clients were being defrauded of their money. There was no suggestion that the Respondent had been dishonest but he had been guilty of serious maladministration and a failure to comply with the regulations by which members of the solicitors’ profession are bound.
16. The Tribunal recognise that there was a sadness in having to take a grave view of the shortcomings of a solicitor who was sixty three years of age.
17. The Tribunal accepted that in this matter there appeared to be no loss to any clients but nonetheless it could not ignore the Respondent’s complete failure to fulfil his professional obligations with regard to the keeping of accounts and the handling of clients’ monies. The Tribunal concluded that it was right to order that the Respondent be Struck Off the Roll of Solicitors and further it was right that he should be ordered

to pay the costs of and incidental to the application and enquiry to include the costs of the Law Society's FIO in a fixed sum.

Dated this 15th day of December 2003
On behalf of the Tribunal

JRC Clitheroe
Chairman