

IN THE MATTER OF JOHN McCORMACK & MARTIN DAVID ALASTAIR
BRADSHAW, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)
Mrs E Stanley
Mr M C Baughan

Date of Hearing: 9th March 2004

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 Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 1st September 2003 that John McCormack and Martin David Alastair Bradshaw of McCormack & Co, 166 Manor Park Road, Harlesden, London NW10 4JT 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 Respondents were that they had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (i) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 they failed to keep accounts properly written up;
- (ii) that they withdrew monies from client account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998;

- (iii) that they utilised clients' funds for their own purposes;
- (iv) that they failed and/or delayed in dealing with post completion matters, that is to say, payment of stamp duty and registration of transfers following completion;
- (v) that they failed to provide client(s) with the required or adequate costs information in breach of the Solicitors Costs Information and Client Care Code and/or failed to deliver a Client Care Letter contrary to Rule 15 Solicitors Practice Rules 1990;
- (vi) that they failed and/or delayed in the delivery of an Accountant's Report for the period ending 31st March 2001, due for delivery on or before 30th September 2001;
- (vii) that on 8th August 2001 they were convicted of an offence contrary to Section 20 of the Consumer Protection Act 1987 at Brent Magistrates Court;
- (viii) that by virtue of the matters set out in the Report of the Forensic Investigation Unit dated 28th December 2001 their conduct was contrary to Rule 1 of the Solicitors Practice Rules 1990 in that it compromised or impaired or was likely to compromise or impair any of the following, namely their independence or integrity as solicitors, their duty to act in the best interest of a client or clients, their good repute or that of the solicitors' profession and their proper standard of work.

By a supplementary statement of Jonathan Richard Goodwin dated 22nd December 2003 it was further alleged against the Respondents that they had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (ix) that they failed and/or delayed in the delivery of an Accountant's Report as set out below:-
 - (a) for the period ending 31st March 2002, due for delivery on or before 30th September 2002;
 - (b) for the period ending 30th September 2002, due for delivery on or before 30th November 2002;
 - (c) for the period ending 31st March 2003, due for delivery on or before 31st May 2003.
- (x) That they failed and/or delayed in replying to correspondence from the Office for the Supervision of Solicitors.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 9th March 2004 when Jonathan Richard Goodwin appeared as the Applicant and the Second Respondent appeared in person and on behalf of the First Respondent.

The evidence before the Tribunal included the Admissions of the Respondents to all the allegations except allegation (v). The Tribunal heard oral evidence from Mr Uddin, Investigation Officer. At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal order that the Respondent John McCormack of 166 Manor Park Road, Harlesden, London NW10 4JT 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 to be subject to detailed assessment unless otherwise agreed.

The Tribunal order that the Respondent Martin David Alastair Bradshaw of 166 Manor Park Road, Harlesden, London NW10 4JT 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 to be subject to detailed assessment unless otherwise agreed.

The facts are set out in paragraphs 1 to 35 hereunder:-

1. The First Respondent, born in 1947, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors. The Second Respondent, born in 1949, was admitted as a solicitor in 1974 and his name remained on the Roll of Solicitors.
2. At all material times the Respondents practised in partnership under the style of McCormack & Co from offices at 166 Manor Park Road, Harlesden, London NW10 4JT.

Accounts breaches

3. Pursuant to Notice given, the Forensic Investigation Unit (“FIU”) of the Law Society carried out an inspection of the Respondents’ books of account commencing on 14th August 2001. A copy of the Investigation Officer’s Report dated 28th December 2001 was before the Tribunal.
4. It was ascertained that the books of account were not in compliance with the Solicitors Accounts Rules. A list of liabilities to clients as at 31st July 2001 was produced for inspection. The items on the lists were in agreement with the balances shown in the clients’ ledgers and, after adjustments, the lists totalled £128,854.10. However, the lists did not include additional liabilities of £6,947.80 which were not shown by the books. A cash shortage therefore existed as at 31st July 2001 in the sum of £6,947.80.
5. The cash shortage was caused as a consequence of incorrect transfers from client to office bank account. The Investigation Officer noted that on 13 client ledger matters, transfers totalling £6,947.80 had been made from client to office bank account in respect of purported bills of costs. The Investigation Officer produced a table in respect of the 13 matters, the details of which were set out at paragraph 9 of the FIU Report and Appendix 1.
6. The Investigation Officer exemplified four of the matters in his Report at paragraphs 10 to 45, two of which are set out below:-

Mr SB - Sale and remortgage - £1,307.31

7. The First Respondent acted for Mr B in the sale of a property in London and the remortgage of a flat in Devon.
8. The files did not contain a client care letter contrary to Rule 15 of the Solicitors Practice Rules 1990.
9. The latest correspondence on the sale file was a letter dated 23rd June 2000 and on the remortgage file a letter dated 30th October 2000. The Second Respondent agreed with the Investigating Officer that after 30th October 2000 no further work had been done in respect of these matters.
10. As at 31st January 2001 a credit balance of £1,307.31 remained on the client ledger. On 11th July 2001, approximately five months later, a bill was raised in the sum of £1,307.31 and that amount was transferred from client to office bank account. Whilst the Second Respondent indicated he had verbally agreed with the client to take the balance on the ledger for "various work", he had not confirmed the instructions to the client in writing. The Investigation Officer could not find a copy of the bill on either of the files, although a copy was found in the central bills file. Mr Bradshaw indicated in relation to the bill that "it is there only to pick up the agreement with the client". He further indicated that the bill had not been sent to the client before the transfer of costs and accepted that the transfer of £1,307.31 amounted to a shortage of clients' funds.

Mr AT - Sale and purchase - £998.75

11. The firm (the First Respondent and later the Second Respondent) acted for Mr T in the sale of one property and the purchase of another in London.
12. The file did not contain a client care letter and the Second Respondent agreed that the same had not been sent to the client contrary to Rule 15 of the Solicitors Practice Rules 1990.
13. Completion took place on 25th April 2000. The Second Respondent agreed that no work had been undertaken in respect of these matters after 18th May 2000.
14. The completion statement showed costs as £998.75 and that amount was transferred from client to office bank account on 28th April 2000. As at 2nd May 2000 an amount of £1,102.50 remained on the client ledger. The Second Respondent agreed that that substantially comprised unpaid stamp duty of £950.00 and unpaid Land Registry fees of £150.00, totalling £1,100.00 and as such it could not have been for further costs. On 11th July 2001, approximately 14 months later, a bill (number 680) was raised in the sum of £998.75 which was the same amount as the previous bill (number 319) for which costs had already been taken, and a further amount of £998.75 was transferred from client to office bank account. The Second Respondent indicated that it was a coincidence that the amount of bill number 680 was the same as the earlier bill, but that the later bill was in respect of helping the client on a "delicate personal matter". Bill number 680 was not found on either file, albeit a copy of the bill was found in the

central bills file. The Second Respondent conceded that the bill, number 680, had not been sent to the client and amounted to a shortage on clients funds of £998.75.

15. The Investigation Officer also noted that approximately 16 months after completion there was no evidence contained on the client matter file of either stamp duty having been paid or the property having been registered. The Second Respondent indicated that he had thought that both stamp duty had been paid and the property registered. He said he would check the position and confirm to the Investigation Officer. At the date of the Investigation Officer's Report being completed no evidence had been received from the Second Respondent.
16. The client account shortage identified in the FIU Report of £6,947.80 was replaced following the inspection.

Client account shortage rectified prior to the inspection

17. The Investigation Officer noted that on 31st July 2001 an amount of £2,179.88 had been transferred from office to client bank account. It was ascertained that the transfer had been made to correct breaches of the Solicitors Accounts Rules which were exemplified in paragraph 46 of the FIU Report.

Rule 15 Solicitors Practice Rules 1990

18. The Investigation Officer reviewed 18 client matter files, listed in paragraph 97 of his Report. In three cases the Second Respondent said that he did not send to the client a client care letter on the basis that the matter did not proceed or that the client was an existing client for whom the firm had previously acted on similar matters. However, of the remaining 15 client matter files, in 13 cases it was identified that there was no copy nor any evidence to indicate delivery on the files of a client care letter explaining to the clients both the costs involved and complaints handling procedures. The Second Respondent agreed that a client care letter was not sent to those clients contrary to Rule 15 of the Solicitors Practice Rules 1990.
19. The Investigation Officer had cause to review the firm's procedures for charging "care and attention" on client matter files. Two matters were reviewed and are set out below.

Mr and Mrs McM - Disciplinary committee hearing

20. The firm (the Second Respondent) acted for the above mentioned clients in connection with a Disciplinary Committee hearing. By letter dated 23rd August 1999 the clients were informed that the hourly rate for an assistant solicitor would be £110 per hour. The Investigation Officer noted, and it was agreed by the Second Respondent, that at the outset there was no mention of any mark up for care and attention.
21. The client care information which was enclosed with the above mentioned letter read:-

“We shall review the costs position at regular intervals, and not less than every six months. We shall also deliver interim accounts to you every three months unless you contact me to make alternative arrangements. When reviewing the costs position, we shall explain to you any changes in circumstances which will or are likely to affect the costs and whether they affect the benefit to you of continuing with the matter. We shall confirm any changes to you in writing”.

On 20th June 2000 the Second Respondent submitted to the clients a “costs breakdown analysis”, a copy of which was exhibited to the Report. That document stated the costs to be £1,414.60 together with a mark up of 50% for “care and attention” at £707.30 plus VAT, to give a total of £2,647.50.

22. By letter dated 6th November 2000 the Second Respondent wrote to the client explaining the reason for the charge for care and attention. The Investigation Officer set out part of the letter at paragraph 103 of his report.
23. The client paid the sum of £1,377.80 on 16th December 2000 in settlement of the bill and reported the same to Trading Standards who carried out their own enquiry.
24. As a consequence of the matter being reported to Trading Standards the Respondents were convicted at Brent Magistrates Court on 8th August 2001 for misleading prices contrary to Section 20 of the Consumer Protection Act 1987 and were fined the sum of £1,000 plus costs. A copy of the Certificate of Conviction was before the Tribunal.
25. The Second Respondent agreed in discussion with the Investigation Officer that the 50% mark up was not stated to the client at the outset of the matter and as such it was not justifiable to charge the client an extra £707.30 plus VAT.

Mr J M

26. The Second Respondent had failed to inform the client that he would be claiming a mark up for care and attention. Following the client querying the inclusion of the mark up the Second Respondent agreed to withdraw the charge. The Second Respondent informed the Investigation and Compliance Officer that “up to August 2001 I did not mention mark up at outset where I charge mark up”.
27. By letter dated 15th February 2002 the OSS wrote to the Respondents seeking their explanation in respect of those matters set out in the FIU Report. By letter dated 28th February 2002 the Respondents replied providing their explanation. In relation to the conviction the Respondents said “In general terms I agree that the prosecution in the Magistrates Court does not reflect well on this firm. I do not believe, however, that it damages the profession as a whole”. By letter dated 28th February 2002 the Second Respondent provided further representations.

Failure to deliver Accountant’s Reports

28. The Respondents’ Accountant’s Report for the period ending 31st March 2001 was due to be delivered to the Law Society on or before 30th September 2001. The Report was not delivered until 27th December 2001. By letter dated 12th November 2002 the OSS

wrote to the Respondents seeking their explanation for the late delivery of the Accountant's Report.

29. The Respondents replied by letter dated 22nd November 2002 indicating that they had provided all records to their accountants in good time to enable them to prepare the Report. It was said that enquiries were being made of the Accountants as to confirmation of the date on which they received papers. No further correspondence was received. The Respondents failed to file their Accountant's Report within the stipulated time period.
30. On 20th June 2002 the matter was considered by the Adjudication Panel who, inter alia, resolved to refer the conduct of the Respondents to the Tribunal. The Respondents were notified by letter from the OSS dated 28th June 2002. No review was requested.
31. An 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 Report was delivered late by the Respondent's Accountants by letter dated 15th November 2002 and received on 18th November 2002.
32. An Accountant's Report for the period ending 30th September 2002 was due to be delivered to the Law Society on or before 30th November 2002. The Report was not delivered until 31st March 2003, some four months late.
33. An Accountant's Report for the period ending 31st March 2003 was due to be delivered to the Law Society on or before 31st May 2003. The Report had not been received.
34. By letter dated 2nd July 2003 the OSS wrote to the Respondents seeking their explanation for the late delivery of the Accountant's Reports for the period ending 31st March 2002 and 30th September 2002. The Respondents failed to reply and further correspondence was sent on 6th August 2003, to which there was no reply. By letter dated 29th August 2003, the Second Respondent wrote to the Applicant indicating that the firm was to close on 29th August 2003.
35. By letter dated 15th September 2003 the OSS wrote to the Second Respondent in respect of the outstanding Accountant's Report for the period ending 31st March 2003. The Second Respondent did not reply and the OSS wrote to him again by letter dated 23rd September 2003 in connection with his failure to reply to earlier letters dated 2nd July and 15th September 2003. The OSS also wrote to the First Respondent on 23rd September 2003 seeking a response to the earlier letter dated 2nd July 2003. The Respondents failed to reply or provide explanation.

The Submissions of the Applicant

36. In relation to Mr SB the Tribunal was asked to consider what work had been done after 30th October 2000 to justify the additional transfer of funds in July 2001.
37. In relation to Mr T both Respondents had acted at certain points in time.

38. While dishonesty was not an essential part of the Applicant's case, in the absence of persuasive evidence by the Respondents the Tribunal might take a certain view of the Respondents.
39. In relation to Mr and Mrs M it was submitted that the clients had not been told about the mark up. The Respondents had accepted that they had been convicted at Brent Magistrates Court and it was difficult to see what the Respondents could say to persuade the Tribunal that this did not bring the Respondents or the profession as a whole into disrepute.
40. In relation to the supplementary statement the Tribunal was asked to note that the Accountant's Report for the period ending 31st March 2003 remained outstanding.
41. It was submitted that this was a serious case. There were a number of allegations of wide ranging breaches of a serious nature. It was submitted in particular that there was nothing which could justify not telling a client that there was to be a 50% uplift on the quoted hourly rate.

The oral evidence of Mr Uddin

42. Mr Uddin gave evidence in support of the Applicant.
43. Mr Uddin gave the Tribunal details of his qualifications and experience and confirmed that his report was true to the best of his knowledge and belief.
44. In relation to Mr and Mrs M, Mr Uddin confirmed the information set out in his report. When the matter had finished the Second Respondent had submitted to the clients a "costs breakdown analysis" which included the hourly rate originally quoted plus a 50% uplift headed "Care and Attention". The uplift amounted to £707.30. This had not been mentioned in the original correspondence and the clients had complained. The Second Respondent had written to the clients on 6th November 2000 setting out his reasons for the charge for care and attention.
45. The clients had paid the sum which they thought was reasonable and had referred the matter to Trading Standards who had carried out their own investigation leading to conviction.
46. The matter of JM had been similar but in that case the uplift had been 30% amounting to the sum of £439.89.
47. Mr Uddin confirmed that the Respondents had co-operated with him fully and had made no attempt to obstruct his enquiries.

The Submissions of the Respondents

48. In relation to the first three allegations the Respondents accepted that there had been a number of "technical" breaches. "Technical" was not intended to belittle the

importance of the breaches but there had been no misappropriation of funds. The work had been done but bills had not been sent out before the transfers.

49. The firm was very small and had no full time bookkeeper. The Respondents were not aware of any funds “missing”. This had been a mechanical exercise which the Respondents had got wrong. After the Investigation Officer’s explanation the Respondents had tried not to make the same error again.
50. In relation to the matter of Mr T everything had been fully completed and indeed the Respondents had continued to act for Mr T subsequently.
51. In relation to allegation (v) the cases of Mr and Mrs M and of Mr JM demonstrated what the Second Respondent had been attempting to do. He accepted that his first letter to Mr and Mrs M made no mention of the mark up and that there had been no letter to Mr JM. The latter was however an existing client and the firm at that time did not send client care letters to existing clients. This had been rectified after the visit of the Investigation Officer.
52. The Second Respondent’s practice had been to tender a breakdown of costs before sending a bill. The breakdown was for negotiation and discussion before the agreed bill would be issued and indeed that was what had happened with Mr JM.
53. Mr and Mrs M who were new clients took a different view. They did not discuss the costs breakdown analysis but paid the original amount and referred the firm to Trading Standards. The covering letter with the costs breakdown had however made clear that it was not a bill and that it was for negotiation.
54. The clients had taken an aggressive stance to the embarrassment of the firm. The Respondents however disputed that this matter brought the profession as a whole into disrepute. The Trading Standards Officer had not taken the view that the conviction had been damaging to the profession as a whole.
55. In relation to the Accountant’s Reports the Respondents accepted that there had been a failure to monitor the position regarding their accountants on whom they had relied to prepare the Reports and to file them.
56. The firm closed in August 2003. This had not been an easy time and the Second Respondent had gone into a form of retreat after that time. By the end of 2003 he had been able to get himself to a position where he could deal with things.
57. The Second Respondent did not ever intend to apply for a Practising Certificate again. The First Respondent had retired. Run off insurance in the sum of £47,000 had been arranged.
58. The breaches of the Rules had not been deliberate. The Investigation Officer had been pleasant and helpful. The Respondents had accepted his definition of “shortfall” even though they had not felt that there was any money missing. It was submitted that there had been no losses, no dishonesty and no misappropriation of funds.

59. The Respondents admitted in relation to allegation (v) that there had not been a client care letter on every single file. A lot of the clients had been with the firm for many years and they did not send such letters to long standing clients. Before the inspection the Respondents had employed a legal executive who had started sending client care letters to all clients. The Respondents however had thought that clients knew how the firm operated.
60. The Respondents believe that adequate client costs information had been given in every case. Conveyancing clients had had the information by agreement but the Respondents could not prove this by way of client care letters.
61. The use of the word “required” in the allegation was the issue. The Respondents had not provided the information within a client care letter but clients had had adequate information.
62. After the Tribunal’s finding on liability in relation to allegation (v) the Second Respondent made the following further submissions in mitigation.
63. The First Respondent had retired following a long period of eyesight difficulties which had now been cured. The First Respondent had however no intention of returning to practice.
64. The Second Respondent was currently employed as a legal adviser within the charity sector to cover a period of maternity leave.

The Findings of the Tribunal

65. The allegations had been admitted with the exception of allegation (v) and the Tribunal found the admitted allegations substantiated.
66. In relation to allegation (v) the Respondents had said that long standing clients were not provided with client care letters and costs information in that they were deemed to have that information or agreements were reached. No evidence of any such agreements had been produced. The Respondents had also said that the covering letter with the costs breakdown analysis made clear that this was not a bill and was for negotiation but no such covering letter had been produced. Even if the Respondents took the view that Mr JM as an established client was familiar with the firm’s costs and with its practice of issuing costs breakdown analyses this could not be said in respect of Mr and Mrs M who were new clients. Allegation (v) was clearly proved in respect of Mr and Mrs M.

Previous appearance before the Tribunal by the Second Respondent

67. On 2nd November 1989 the following allegations were substantiated against the Second Respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that he:-
 - (i) practised as a solicitor without there being in force a Practising Certificate;

- (ii) failed to deliver an Accountant's Report notwithstanding Section 34 of the Solicitors Act 1974 and the Rules made thereunder;
 - (iii) failed to maintain properly written accounts contrary to Rule 11 of the Solicitors Accounts Rules 1986.
68. The Tribunal on that occasion said that there had been a complete failure to deal with fundamental administrative matters which were imposed upon solicitors in order to enable their professional body to police their practices and thus protect and serve the interests of the public which was a serious failure. The Tribunal took a very serious view of a solicitor who set up in practice on his own account and then completely failed to ensure that the Rules imposed upon a solicitor for the regulation of his practice and the protection of the public were obeyed. The Tribunal noted that the Respondent had been found to be clinically depressed. The Respondent was not, at least at the time, fit to practise as a solicitor. The Tribunal in 1989 ordered that the Respondent be suspended from practice as a solicitor for a period of six months and that he pay the Applicant's costs. The Tribunal also recommended that the Second Respondent should not in future be permitted to practise other than in an approved partnership or in approved employment and further recommended that a Practising Certificate should not be granted to the Second Respondent unless the Law Society was satisfied that he had successfully completed a course in office and solicitors' accounts administration, such course to be acceptable to and recognised by the Law Society.
69. The Tribunal in March 2004 had found serious allegations substantiated against the Respondents involving clients' money and accounting procedures that went to the root of all solicitors' practices. Clients had not been given correct advice regarding how they would be charged and it was probable that if Mr and Mrs M had not reported the matter to Trading Standards Department then clients would have continued to have been misled by being charged more than they had initially been led to believe they would have to pay. The Tribunal had noted the letter sent on 6th November 2000 to Mr and Mrs M attempting to justify the mark up. Although the Second Respondent had told the Tribunal that his practice was to "negotiate" after the costs breakdown analysis, the Tribunal was concerned about the effect on a lay client of such a letter which clearly implied that the Respondents were entitled to charge the mark up.
70. While the Second Respondent had acted for Mr and Mrs M, the Tribunal noted that the First Respondent had been the joint fee earner in 4 of the 13 cases identified in the Report at paragraph 97 as lacking a Client Care Letter explaining the costs involved or the complaints handling procedures.
71. Also of concern was the transfer of funds prior to the issue of bills which prevented clients from monitoring what was being taken in costs. The First Respondent had been the fee earner or joint fee earner in 7 of the 13 cases identified in paragraph 9 of the Investigation Accountant's Report where there had been incorrect transfers and the Second Respondent had been the fee earner or joint fee earner in all but one of the cases. The Tribunal considered that both partners were liable for the failings of the firm.
72. The fact that both Respondents had been convicted of misleading prices was a serious matter which did no credit to either of them and was damaging to the integrity and good name of the profession as a whole. It was a matter of concern that the Respondents still

did not appear to recognise that the fact of their conviction damaged the profession in the eyes of the public, indeed they still appeared to blame the clients for what had happened, referring to “their aggressive stance”.

73. The fact that Accountant’s Reports were not filed on time and indeed one remained outstanding was also a serious matter. The filing of Accountant’s Reports was one of the mechanisms by which the Law Society regulated solicitors in order to give the public confidence that client funds were being dealt with properly. This failure was exacerbated by the Respondents’ failure to reply to correspondence from the OSS. These failures showed a serious disregard for the regulatory requirements imposed on all solicitors in order to protect the public.
74. The conduct of the Respondents had undermined the confidence of the public in the profession. The number and seriousness of the allegations which had been substantiated against the Respondents were such that it would not be appropriate in the interests of the public and of the reputation of the profession as a whole for the Respondents to continue to be members of the profession.
75. The Tribunal made the following orders:-

The Tribunal order that the Respondent John McCormack of 166 Manor Park Road, Harlesden, London NW10 4JT 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 to be subject to detailed assessment unless otherwise agreed.

The Tribunal order that the Respondent Martin David Alastair Bradshaw of 166 Manor Park Road, Harlesden, London NW10 4JT 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 to be subject to detailed assessment unless otherwise agreed.

Dated this 7th day of May 2004
on behalf of the Tribunal

A N Spooner
Chairman