

IN THE MATTER OF DAVID FISHER LANGFORD, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Ms K Todner (in the chair)
Miss T Cullen
Mr M G Taylor CBE

Date of Hearing: 5th August 2004

FINDINGS

**and Order that a Law Society Direction be enforced
as if it were an Order of The High Court**

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") (as it then was) by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 18th November 2003 that David Fisher Langford of Finchley, London, N3 might be required to answer the allegations contained in the statement which accompanied this application and that such Order might be made as the Tribunal should think right.

On 25th March 2004 Mr Battersby, the Applicant, made a supplementary statement containing further allegations.

At the opening of the hearing the Applicant sought to withdraw an allegation in the supplementary statement. The Respondent agreed and the Tribunal consented thereto.

The allegations set out below include those contained in both the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following particulars:

- (i) that he delayed unreasonably in the registration of property transactions;
- (ii) that he failed to respond promptly and substantively to correspondence from the OSS;
- (iii) that he failed to comply with a decision of The Law Society Adjudication Panel regarding a payment of compensation made on 21st May 2003;
- (iv) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 he did fail to record receipt of monies from clients;
- (v) that he misappropriated clients' monies;
- (vi) that he failed to respond promptly and substantively to correspondence from the OSS (in respect of matters additional to those relied upon to support allegation (ii) above);
- (vii) in breach of a condition imposed by The Law Society did fail to notify a new employer of conditions on his Practising Certificate and conditions on the approval of his employment;
- (viii) withdrawn;
- (ix) failed to respond promptly and substantively to correspondence from the OSS (in respect of a matter additional to those supporting allegations (ii) and (vi)).

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th August when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the Respondent's submissions of allegations (i), (ii), (iii), (vi) (on the basis that the Respondent did not respond in writing but did make telephone calls which was accepted by the Applicant), allegation (vii) and allegation (ix) (on the basis again that the Respondent did not respond in writing but did make telephone calls and again the basis of that admission was accepted by the Applicant). The Respondent denied allegations (iv) and (v). Mr Uddin, of The Law Society's Forensic Investigations Department, gave oral evidence and the Respondent gave oral evidence.

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

The Tribunal Orders that the Respondent, David Fisher Langford of Finchley, London, N3, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 5th day of August 2004 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,544.24.

At the conclusion of the hearing the Respondent notified the Tribunal's clerk that he had moved to a new address namely 74 Finchley Lane, Hendon, NW4.

The Respondent's History

1. The Respondent was born on 23rd January 1956 and was 48 years of age at the date of the hearing. He was admitted as a solicitor in June 1981. At the time of the hearing the Respondent was not currently practising as a solicitor. At the times material to allegations (i), (ii) and (iii) the Respondent was employed by Bryan Barnes & Co, solicitors of Peterborough until the 1st April 1999 when he moved to Roger Terrell & Co, solicitors, also of Peterborough. He left Roger Terrell & Co on 15th July 1999. At the times material to allegations (iv) to (ix) the Respondent had been a partner in the firm of Caplin & Co of New Bond Street, London.

The evidence relating to the disputed allegations (iv) and (v) that contrary to Rule 32 of the Solicitors Accounts Rules 1998 the Respondent failed to record receipt of monies from clients and that he misappropriated clients' monies

2. It was the Applicant's case that whilst at Caplin & Co, in March 2000, the Respondent was acting for Mr T and Mrs W in connection with their acquisition of a leasehold property in Cromwell Road, London for £380,000. Completion of the matter took place on 13th March 2000 and on that day the clients visited the Respondent who told them that more monies were required to complete the matter. Mr T was told by the Respondent that a cheque would not be a suitable means of payment because funds were required instantly. Mr T handed to the Respondent £2,030 in cash. The stamp duty on the transaction was not paid until 10th August 2001 (after the Respondent had left the firm).
3. Following the payment of the stamp duty, Caplin & Co submitted a completion statement to the clients on 15th October 2001 requesting payment of a shortfall of £2,123.13. On 25th October 2001 a representative of the mortgagees responded to the firm making it clear that the clients had paid the sum of £2,030 to the Respondent on 13th March 2000. Subsequently an e-mail was received from Mr T confirming this.
4. In his evidence Mr Uddin said that the ledger did not show the cash receipt of £2,030 which had been handed to the Respondent. Mr Uddin also had inspected the file and there was no record of the money having been received on the file. Mr Uddin made enquiry of Mr T who responded by e-mail:

"...my recollection of the circumstances are that when my wife and I visited Mr Langford on the day of completion (we had only arrived in the UK the night before as previously arranged), he advised me that he did not have sufficient funds to complete the purchase and that a cheque would not be of any use as it would take at least three working days to clear. Luckily, since having just come into the country, I was able to give Mr Langford the shortfall in cash immediately, to be able to complete and move into the property later that day (just over £2,000)."

Unfortunately Mr Langford did not provide us with a formal receipt and indicated that the money would be listed in his detailed completion statement. As the matter was to complete that day I did not believe it necessary to insist on one there and then. However both my wife and I were in the room when the money was handed over and she can confirm the fact....."

5. The Respondent in his oral evidence told the Tribunal that it was his practice that if a large sum had been paid to him in cash he would ask a third party to go into his room and the money would be counted in front of that third party. With regard to the matter of Mr T and Mrs W he recalled that someone did come into his room from reception. That person stood there while the money was counted. The Respondent had miscalculated the amount of stamp duty payable and he had asked to have cleared funds as the matter was to be completed on the date when the money was paid to him.
6. The procedure to be followed at Caplin & Co was that a paying in slip would be completed and it was the Respondent's practice either to take the money and the paying in slip to the accounts department himself or to give it to someone to take to the accounts department. As the payment received from Mr T and Mrs W related in part to stamp duty that money would have been paid into client account.
7. Also whilst at Caplin & Co, in May 2001 the Respondent was acting for Mr R and Ms C in connection with their acquisition of the lease of a property at New Barnet. Completion of the matter took place on 11th May 2001. The stamp duty, plus a penalty, was paid in September of that year. The client ledger recorded that cash sums of £765 and £130 were received from the clients on 27th April 2001 and 4th May 2001 respectively. There was no record of receipt of a further payment of £587.50 which the clients had paid to the Respondent in cash at the office on 10th May 2001, the day prior to completion. This matter came to light following the departure of the Respondent from the firm when the clients were sent a completion statement on 13th September 2001 requesting a further payment. The clients replied, pointing out that they had made the cash payment to the Respondent on 10th May 2001.
8. Mr Uddin confirmed that receipt of the cash was not recorded in the relevant client ledger, nor was there any note on the client matter file.
9. In his oral evidence the Respondent said that he had a more specific recollection of this second receipt of cash. He recalled that the clients had come in after hours. They had required a business lease and some ten days after completion the clients had asked if they could escape from the lease as the business was failing. They had found themselves in drastic financial circumstances.
10. In connection with that receipt for £587.50 from Mr R and Ms C, the Respondent would have adopted his customary practice as set out above which was one he had adopted over a period of some 20 years.
11. The Respondent was in no doubt that he did make an appropriate record of both sums of money by way of a paying in slip and that the money and the paying in slips were handed to the firm's cashiers' department.
12. The Respondent said that there had been an incident at Caplin & Co which might well have been relevant to the matters alleged against the Respondent. A female member of the firm's accounts staff had been dismissed for forging the signature of the senior partner on office account cheques drawn to cash. She then cashed those cheques and kept the money. The Respondent said that he could not offer that as an explanation

but the matter might well have been of some relevance. A fee earner who collects money and passes it, and a proper identification of that money, to the firm's accounts department would not be responsible for its going astray in the hands of that department.

13. The Respondent recalled in the case of Mr R and Ms C's money that it had been in an envelope and he had placed it in his desk because the meeting with the clients had been after office hours.
14. The Respondent's recollection was that paying-in slips were prepared in duplicate. Both copies went to the accounts department and one was returned to the fee earner to go back on the file. The Respondent was not able to offer any explanation as to why a copy of the relevant paying-in slip did not appear on either of the client matter files.
15. When asked why the dismissal of the member of accounts staff had not been raised with Mr Uddin at the time of his inspection, the Respondent said that the senior partner of the firm had taken the view that that member of staff had been only a young girl and he did not want to have a suicide on his hands. He had not taken the matter further.

The Submissions of the Applicant

16. Sums of money in cash had been received by the Respondent on two occasions. The receipt of those monies was not recorded on the client's ledger nor in the client matter file. The money had not been paid in to any of the firm's bank accounts.
17. The Applicant did put the case against the Respondent as one involving dishonesty.

The Submissions of the Respondent

18. The Respondent had accepted that he had received the cash payments referred to. There was no reason why he should not have adopted his customary procedure when receiving cash payments which he had outlined to the Tribunal in his evidence. He had handled money over a period of some 20 years at the material time. He had been a sole practitioner and would have had far more opportunity to misappropriate clients' money than when he was a member of the firm. Whilst a sole practitioner the Respondent had undergone a three day investigation by The Law Society's Investigating Accountant who made a finding that the Respondent's keeping of records had been rather sloppy but there had been no suggestion of dishonesty or misappropriation.
19. Whilst he was at Caplin & Co the Respondent earned more money than he had before or since and it simply would not have made sense for a person in his position to misapply clients' cash. Neither of the sums concerned represented a large sum of money.
20. The Respondent was not dishonest and he had not misappropriated the cash sums referred to.

The Findings of Fact by the Tribunal

21. The Tribunal found the Respondent to be an honest and truthful witness. They believed his account of what had happened. The Tribunal found therefore that he had, as he himself accepted, received the two cash sums and had attempted to secure the payment in of those sums to one of the firm's accounts. The Tribunal found that there had been no record either in the firm's books or in the client matter files of the receipt of those sums of money.

The Tribunal's findings relating to allegations (iv) and (v)

22. The Tribunal found allegation (iv) to have been substantiated, as there was no record of the receipt of cash, but did not find that the breach of Rule 32 in the particular circumstances of this case amounted to conduct unbefitting a solicitor. The Tribunal found allegation (v) not to have been substantiated, as it believed that the Respondent had taken appropriate steps to pay the money into the appropriate account and had not retained it.

The facts relating to the admitted allegations

23. Between 4th June 1998 and 27th October 1998, when he was employed by Bryan Barnes & Co, the Respondent dealt with property transactions on behalf of Mr and Mrs JH. Some of these he had dealt with from the outset and others he had taken over from a colleague. The Tribunal was invited to consider seven matters. All involved registered land. In six of the seven matters, the Respondent had not effected the necessary registration by the time he left Bryan Barnes & Co on 31st March 1999. The Respondent completed some of the outstanding works at his new place of work and the remainder was completed by others. In one case (land adjoining B Farm) the Respondent did not deal with Land Registry requisitions dated 18th September 1998 and repeated on 26th January 1999, before he left Bryan Barnes & Co.
24. In the other six matters the completion date and date of registration were as follows:

| <u>Completion Date</u> | <u>Date of Registration</u> |
|------------------------|-----------------------------|
| (1) 04.06.98 | 14.05.99 |
| (2) 12.08.98 | 14.05.99 |
| (3) 11.09.98 | 04.10.99 |
| (4) 29.09.98 | 12.10.99 |
| (5) 01.10.98 | 07.99 |
| (6) 27.10.98 | 04.10.99 |

Cases (1), (2) and (5) registration had been effected by the Respondent and the other three cases registration had been dealt with by others.

25. Mr and Mrs JH complained to the OSS about the delays. The OSS sought the Respondent's explanation by letter of 30th May 2002. The Respondent telephoned the OSS on 19th June 2002 saying that he hoped shortly to respond in writing. No response was received. On 18th July 2002, a Statutory Notice, requiring a response in ten days, was sent to the Respondent's residential address. There was no response and

another letter of 31st July 2002 was sent. The Respondent telephoned the OSS on 5th August 2003. A further letter was sent to him on 13th August 2002 which produced another telephone response on 21st August. The OSS wrote to the Respondent again on 26th September 2002.

26. A copy of the Report prepared for the OSS Adjudication Panel was sent to the Respondent with a letter of 7th February 2003. The Respondent's response dated 21st February 2003 indicated that he would send his comments on the Report. He did not do so.
27. When on 21st May 2003 the Adjudication Panel resolved to refer the Respondent to the Tribunal they also found that the services provided by the Respondent to his clients had been inadequate and directed that he pay £250 compensation to them for the inconvenience and distress caused. He was notified by letter dated 4th June 2003. By letter of 1st July 2003 the OSS required the Respondent to comply within 14 days. He did not. At the date of the hearing the Respondent had not complied.
28. The OSS wrote to the Respondent on 31st August 2002 seeking his explanation of the allegations that two cash sums paid to him by clients had not been accounted for. On 4th September and 3rd October 2002 the Respondent on the telephone requested an extension of time in which to produce his reply. No response was received. A further letter was sent to him on 4th April 2003. He did not respond.
29. At the time in 1999 when the Respondent applied to a firm of solicitors in Peterborough (RT & Co) for employment his practising certificate was subject to a condition that The Law Society's consent to his employment had to be obtained.
30. The Law Society, having had no response from the Respondent to its letter of 29th March 1999 wrote to him again on 14th May 1999.
31. A letter relating to the same matter was written by the OSS to the Respondent on 30th May 2000. The OSS wrote further letters of 18th July 2002 and 31st July 2002. The Respondent did not respond. The Law Society had approved the employment of the Respondent subject to a number of conditions. The Respondent did not notify his employer of the conditions on his practising certificate or the conditions to which the approval of such employment was subject.

The Submissions of the Applicant

32. The Respondent admitted that he had delayed in the registration of property transactions. He had also failed to respond promptly and substantively to a series of correspondence addressed to him by The Law Society and/or the OSS. It was accepted by the Applicant that the Respondent had made some telephone contact with his professional body after receiving letters but he had not written and had not fully and substantively addressed the issues which his professional regulatory required him to address.

The Submissions of the Respondent offered in mitigation of allegation (iv) which the Tribunal had found substantiated against him (although it did not find it conduct unbefitting a solicitor) and the admitted allegations

33. Prior to the hearing the Respondent had handed into the Tribunal a letter setting out the personal difficulties to which he had been subjected. His concern had been that he did not wish those matters (which had been given considerable contemporaneous publicity) should not be referred to save the reopening of old wounds which would be likely to have an unfair detrimental effect upon the Respondent's immediate family.
34. The Tribunal recognised that the Respondent had been subjected to tragic life events and considers it inappropriate to rehearse them here.
35. As a result of the trauma faced by the Respondent he had become dependent on alcohol.
36. The Respondent had shortly before the hearing taken steps to get help with his problem and was at the time of the hearing in receipt of therapy which he felt was a help to him.
37. The Respondent had not ignored his professional body. He had made telephone calls but accepted that he had not written the substantive responses required.
38. The Respondent accepted that he was not good at concluding the post completion work in conveyancing matters. He tended to regard it as administrative work and was inclined to put his energies into conveyancing transactions that were current.
39. The Respondent was not at the time of the hearing practising as a solicitor but was working in an organisation that did have some connection with the law which provided him with a modest income.
40. The Respondent's rent and the maintenance paid to his wife and child left him with only a small balance of money with which to maintain himself.
41. The Respondent apologised for the trouble which he had caused. The Respondent had moved from ten different addresses within the previous period of eight years. Although not offered as an excuse that was partly the reason why he had not responded to letters addressed to him by his professional body.
42. The Respondent considered that it would be sensible for him not to return to practice as a solicitor until he had 'sorted himself out'.

Previous Findings and Order

43. Following a hearing on 22nd September 1992 at which the Respondent was required to answer the following allegations:
 - (a) contrary to the provisions of the Solicitors Act 1974 failed to deliver to The Law Society Accountant's Reports as required by the Act for any period of practice after September 1987;

- (b) contrary to the provisions of Rule 11 of the Solicitors Accounts Rules 1986 failed to keep properly written up his books of account or to effect reconciliation between his clients, cash book and client bank account as by the said Rule required;
 - (c) by virtue of the aforementioned been guilty of conduct unbecoming a solicitor.
44. In its Findings and Order of 3rd November 1992 the Tribunal Ordered that the Respondent pay a fine of £250 (forfeit to Her Majesty the Queen) and that he pay the Applicant's costs (to include the Investigation Accountant to the Solicitors Complaints Bureau) such costs to be subject to taxation.
45. On that occasion the Tribunal said, having found the allegations to have been substantiated:

"On the face of it this Respondent has "flown in the face" of the Rules imposed upon solicitors to protect their clients' interests. There could be no doubt that clients' monies were placed at risk if proper books of account were not maintained and The Law Society was prevented from ensuring members of the public of the propriety of a solicitor if he failed to submit Accountant's Reports in accordance with the requirements of the Solicitors' Act.

The Tribunal accept that this Respondent has been guilty of muddle and incompetence rather than impropriety and dishonesty. They also accept that the personal pressures upon this Respondent, at a time when he commenced in sole private practice, were very great indeed. The Respondent has already suffered a great deal. He has lost his practice and his income for a large part of 1992. Clearly he has been subjected to severe personal pressures. The reduction in the value of his property, which was used to secure a substantial loan, together with his other indebtedness, place a great burden on his shoulders. Because it seemed that the Respondent had handled clients' matters satisfactorily, and had not been dishonest nor reckless with clients' monies, the Tribunal was reluctant to deprive him of his ability to practise, particularly when The Law Society had consented to the employment which appeared to be his only salvation. The Tribunal consider the imposition of a financial penalty to be appropriate, but a penalty set at the level which they would normally impose would be a bitter blow to the Respondent in his present financial circumstances. It is for this reason that the Tribunal has exceptionally decided to impose a small financial penalty; in addition it will make an Order for costs against the Respondent. The Tribunal hope that The Law Society will look favourably upon an application by the Respondent to pay off such costs by relatively small instalments from time to time."

The Tribunal's Decision and Reasons

46. In addition to finding allegation (iv) to have been substantiated (but that it did not amount to conduct unbecoming a solicitor), the Tribunal found the rest of the allegations admitted by the Respondent to have been substantiated.

47. The Respondent had on a number of occasions failed to respond fully and substantively to letters addressed by The Law Society or the OSS. It is a requirement that a solicitor reply promptly and substantially to letters addressed to him by his own professional body. Any failure to do so on his part has the effect of preventing his professional body from fulfilling its duties as a regulator and that is a serious matter.
48. The Respondent had delayed in the registration of property transactions and thereby undoubtedly caused inconvenience and anxiety to clients and others. To regard registration of title as a mere administrative matter was foolish in the extreme. It is crucial to a client that his solicitor secures for him a good and marketable title or that a mortgage advance is properly secured on a property with such title and that is not achieved for the client until registration at HM Land Registry has been achieved.
49. The Tribunal recognises that the Respondent's failures, including that referred to in allegation (viii) which on the face of it is extremely serious, were not caused by the Respondent's lack of good character or deliberately but were rather the result of the tragedies in the Respondent's life which led to his increasing dependence on alcohol. It was the Tribunal's view that the Respondent had 'fallen apart'. The earlier matters established against the Respondent in 1992 did not really have relevance to the allegations found established against the Respondent in 2004, save perhaps to underline the Respondent's own explanation that he was not particularly good at administrative matters.
50. The Tribunal gave the Respondent credit for his admissions and his explanations and the fact that he attended the Tribunal hearing which the Tribunal recognised was very difficult for him. The Tribunal have also given him credit for his truthful evidence and frank admissions and explanations.
51. In all of the circumstances the Tribunal considered it appropriate to order that the Respondent be suspended from practice as a solicitor for an indefinite period of time.
52. Had the Respondent's mitigating circumstances not been so great, and if the Tribunal had found the same allegations to have been substantiated against him, they would have considered the imposition of a suspension from practice of one year. Because of this the Tribunal would not expect the Respondent to make an application for the indefinite period of a suspension to be determined until the period of one year has passed. If the Respondent does make such an application to have the period of suspension brought to an end, the Tribunal anticipates that a future Division of the Tribunal considering such application would be likely to require formal evidence that the Respondent is in control of his dependency on alcohol as well as satisfying the Tribunal of his fitness to practice as a solicitor in all other respects.
53. The Applicant had indicated the level of costs which he sought. The Tribunal had not found the dishonesty alleged against the Respondent to have been substantiated and had found one such allegation not to have been substantiated at all, the other had been substantiated but a finding had not been made that that had amounted to conduct unbecoming a solicitor. The Tribunal have also taken account of the difficulty suffered by the Respondent with regard to residential accommodation and accepted that this had played no small part in the difficulties encountered by the OSS in tracing him. In all of the circumstances the Tribunal considered it right and proportionate to Order

that the Respondent pay 50% of the costs sought by the Applicant which they fixed in the sum of £2,544.24.

DATED this 18th day of October 2004
on behalf of the Tribunal

K Todner
Chairman