

IN THE MATTER OF KEVIN RICHARD NUTT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. I R Woolfe (in the chair)
Mr. J R C Clitheroe
Mr. G Fisher

Date of Hearing: 15th April 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 ("OSS") by Emma Grace, solicitor and partner in the firm of Nelson & Co, Riverside West, Whitehall Road, Leeds, LS1 4AW on 21st November 2003 that Kevin Richard Nutt solicitor of St Peter's Street, Bedford, 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 been guilty of conduct unbecoming a solicitor in that he:

1. Provided information to the Court which he knew, or ought reasonably to have known was false or misleading and which he knew, or ought reasonably to have known, would deceive or mislead the Court;
2. Acted in a way which he knew, or ought reasonably to have known, was false or misleading and which he knew, or ought reasonably to have known, would deceive or mislead clients;
3. Acted in a way which breached his duty of frankness and good faith towards fellow solicitors;

4. Acted in a way which restricted, or could reasonably be seen as restricting, clients' freedom of choice of solicitor;
5. Failed to carry out clients' instructions diligently and promptly, or at all, and failed to deal promptly with communications relating to the matter of a client;
6. Terminated his retainer with a client without good reason and/or without giving reasonable notice;
7. In all matters acted in a way which compromised or impaired his ability to act in the best interests of his client; the good repute of the solicitors' profession; the solicitor's proper standard of work; and the solicitor's duty to the Court.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Robert Roscoe solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman of 70 Marylebone Lane, London, W1U 2PQ appeared for the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Order that the Respondent, Kevin Richard Nutt of Jackman Close, Bromham, Bedford (formerly of St Peters Street, Bedford), 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 £3,500.

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

1. The Respondent, born in 1961, was admitted as a solicitor in 1987. At the material time the Respondent was a salaried partner in the firm of Mellows at Bedford.
2. In July 2002 Miss C, who had been injured in a motoring accident together with two others, complained to the OSS about the Respondent's delay in contacting her, failure to follow her instructions and failure to inform her of her case's progress, most importantly in relation to a hearing date. The case was a personal injury matter where liability had been admitted.
3. After Miss C and the other claimants and/or their solicitor failed to attend at the final hearing, the Court made an award of £1 in compensation. In addition to poor service and failure to keep her informed Miss C alleged that the Respondent had lied to her and/or to the Court.
4. Subsequently the other two injured parties also complained to the OSS and asked to be joined in the complaint by Miss C. All three had instructed the Respondent to handle their claims for personal injury.
5. The history of the case was that the three complainants had instructed a sole practitioner to deal with their case. On his retirement the file had been taken over by the Respondent. During the course of the case, the complainants alleged that the

Respondent lied to the Court on two occasions – once in a Statement of Truth, in which he alleged lack of progress was due to lack of cooperation on his clients' part and a conflict between himself and his clients; and secondly during the final hearing when the Respondent claimed that he spoke to the judge on the telephone and informed her that the clients had been notified of the hearing by way of a letter. No such letter was received by the clients. The Respondent said he believed he had sent the letter dated 3rd May. He was unable to trace a copy. He accepted that the clients had not received it.

6. The clients also alleged that they were misinformed as to the general progress of the matter and they were told that offers to settle had been put forward when they had not. It was the clients' position that there had been a general lack of care and attention in connection with their case, resulting in their being awarded nominal damages. Payments made into court had been withdrawn.
7. The following matters supported the clients' allegations:
 - (a) a letter to the solicitors representing the Defendant in the clients' case dated 29th November 2001 from the Respondent stated, inter alia, that the Respondent was in the process of arranging to pass the file to another firm within a few days and seeking an adjournment by agreement of the hearing set for the following Tuesday stating that "because of the problems that have arisen" his firm would be unable to conduct the matter at the hearing date;
 - (b) in a Statement of Truth dated 29th November 2001 sent both to the Court and to the Defendant's solicitors the Respondent alleged that:
 - a medical report had not been prepared owing to the failure of two of the clients to cooperate with the medical expert's enquiries;
 - a conflict had arisen between his clients and himself;
 - as a result of this conflict, the Respondent could no longer continue to act for the clients;
 - that he was withdrawing from the case and "taking steps to have the clients represented elsewhere". He sought an adjournment in order to enable the file to be passed to fresh solicitors.
 - (c) by a letter dated 3rd December 2001 the Respondent stated that the expert appointed by him was unable to take on any new medico-legal work for the foreseeable future;
 - (d) on 18th March 2002 His Honour Judge Hamilton made the following Order: IT IS ORDERED that
 1. Unless the Claimants do, by 15 April 2002 apply to the Court for further directions as to the trial of the assessment of damages, the damages be assessed at £1 in each of the Claimants cases, credit being given for the interim payments made.

- 2. If the Claimants do not make the application referred to in paragraph 1 above by 15 April 2002, there further be an order for the payment out to the Defendants' solicitors of the sums in Court (less £3) together with any accrued interest, and an order that the Claimants pay the Defendant's costs of the assessment of damages as from 1 January 2001.
- 3. If the Claimants do make the application referred to in paragraph 1 above, the costs of today are to be reserved.

(e) on 10th June 2002 District Judge Short made the following Order:

"IT IS ORDERED THAT

- 1. Pursuant to the Order of 18 March 2002 there be Judgment for each of the First, Second and Third Claimants in the sum of £1.00 credit being given for interim payments made.
- 2. There be leave to the Defendant forthwith to remove from the Court the funds paid in together with accrued interest less £3.00 representing normal [sic] damages of £1.00 for each Claimant.
- 3. The Claimants to pay the Defendant's costs reserved on 18th March 2002 and the costs of the assessment of damages including costs of today from 1 January 2001 to be assessed if not agreed on standard basis.
- 4. The First, Second and Third Claimants shall be deemed to be acting in person since 3 May 2002 and their respective addresses for services are as follows:-

.....

(f) the Respondent wrote the following letter to each of his three clients:

21 June 2002

"Dear-----

Re: Your Accident Claim

Regrettably I write to advise that I, and this firm, am unable to continue to act in this matter on your behalf following the retirement of MS and matters which have arisen since.

In order to ensure that your claim is dealt with I have spoken to an experienced personal injury lawyer who is the head of the personal injury department at Messrs---- in Milton Keynes who has agreed to receive your file in this matter and take over conduct on your behalf. That solicitor is -----

The file is currently being transferred to him and I have asked him to contact you as soon as he has had the opportunity of receiving and reviewing the file.

He has been given the court details and those of the Defendant's solicitors and no doubt he will establish contact with you, the court and the Defendant's solicitors shortly.

Please accept my sincere apologies for having to withdraw from the conduct of this claim on your behalf and I trust that in Mr ----- 's hands this claim will be brought to a satisfactory conclusion in due course.

Yours sincerely
Kevin Nutt"

- (g) the clients had not given instructions that their file be passed to the Milton Keynes solicitor. The clients said that the Respondent's assertion that he had sent a letter to the Defendant in the case seeking to compromise the matter was not true.
- (h) the second client said that the Respondent informed her that he was unable to attend the hearing at Luton due to his bad back, that the hearing was "nothing much" and that the Milton Keynes firm had not agreed to take the case.
- (i) the Tribunal had before it a witness statement of Mr Thomas at Hewitson Beck & Shaw (the Defendant's solicitors) dated 18th July 2002 made in response to the clients' application to have the judgment of 10th June 2002 set aside. In this statement he confirmed that :
 - (1) liability was admitted on 3rd September 1998 and interlocutory judgment given on 19th February 1999;
 - (2) The Respondent had assumed responsibility for the file on 1st February 2001;
 - (3) On 28th November 2001 the Respondent had rung to say that he could no longer continue to act for the claimants and that the file was being transferred. Also on 3rd December 2001 the matter of a request for an adjournment came before the Court and that the Respondent had given the impression that there was a lack of cooperation by the clients with the expert and that the clients would soon be deciding whether or not to rely on this evidence;
 - (4) On 10th June 2002 the Respondent had not attended Court but District Judge Short had telephoned the Respondent. The Judge made her Order on the basis that the Respondent had informed her that the clients had been given notice of the hearing by the Respondent by way of a letter to each of them dated 3rd May 2002.
- (j) Mr McCourt of Woodfine, Batchelor Solicitors, made a statement dated 23rd July 2002 which was before the Tribunal. He had taken over the matter for the

clients after the Order of 10th June 2002 had been received. He reported that there was no evidence on the file that the Respondent was arranging to transfer the file to a successor firm as indicated by him to the clients and to the Defendant's solicitors. He further confirmed that there was no evidence on the file of a failure by the clients to cooperate with the expert as alleged by the Respondent in his Statement of Truth and there was no evidence on the file of any letter of 3rd May 2002 or any other letter informing the clients of the hearing on 10th June 2002.

The Submissions of the Applicant

8. The Respondent did not contest either the facts or the allegations. The Respondent's behaviour spoke for itself.
9. Mr Roscoe had spoken to the solicitor who had taken over the personal injury claim for the clients and was able to report that their claim had been resolved and the three lady clients had "done quite well out of it". They had not suffered any actual loss.

The Submissions of the Respondent

10. The Respondent joined Mellows as an assistant solicitor in January 2000 where he continued to manage the workload he had brought with him. He additionally had the workload inherited from his predecessor at Mellows and work transferred to him in the run up to and after the retirement of a senior partner at Mellows. Some of the inherited files were not in good order, some had been neglected.
11. At the time transitional arrangements were in place following the introduction of the Civil Procedure Rules 1998 requiring such cases to be brought before the Court by the third week in April 2000, failing which they would be liable to be struck out. Indeed some of the cases were close to automatic strike-out under the old provisions. The Respondent was faced with the very substantial task of putting several cases into good order to avoid strike out. One particular case, of which the Respondent's predecessor had had conduct, had taken up a disproportionate amount of his time.
12. The Respondent also took some cases over from a former sole practitioner who had become a consultant to Mellows. That consultant had conducted his matters in a way that led his clients to hold unreasonable expectations of the outcome which the Respondent had to manage.
13. Of the several cases the Respondent inherited from the consultant all but two were successfully completed without any cause for complaint. One of those two was the case of Miss C and the two other complainants.
14. Because of the Respondent's excessive workload which built up during the course of 2000 the partners of Mellows decided to employ an assistant for the Respondent. The engagement of this particular employee proved disastrous. It became apparent that her abilities and qualifications were not as she had represented. Her presence became an additional burden upon the Respondent.
15. The Respondent believed that this employee bore a grudge against him. She had resigned upon invitation but initiated a claim to an Employment Tribunal in the early

months of 2002 alleging harassment, bullying and discrimination by the Respondent which allegations were vexatious and unfounded. This matter caused much stress to the Respondent and was contemporaneous with the events about which Miss C and the other two clients complained. In the event the former employee withdrew her Employment Tribunal claim.

16. In December 2000 the Respondent suffered a herniation of two vertebrae in his lower back which caused considerable physical difficulty, following episodes of aggravation which have occurred intermittently since.
17. A particular period of aggravation occurred at Christmas 2001 and lasted several months into the summer of 2002 during which time the Respondent underwent intensive physiotherapy, acupuncture and osteopathy to relieve the symptoms. On some occasions he was rendered immobile and had to spend prolonged periods on his back. On other occasions he was unable to rise from a chair, or he would sink to the ground if he turned in a particular manner. On many occasions he was unable to drive at all.
18. Because of his back condition the Respondent cancelled several meetings and he was unable to attend some meetings or Court appointments. One of those occasions was that on 10th June 2002.
19. During the period from Christmas 2001 to June 2002 and beyond, the Respondent had taken strong painkillers in the form of Co-dydramol and Co-proxamol. In retrospect he believed that his back condition and the painkillers affected his performance and his judgement on occasions.
20. The Respondent made known his concerns about his mental stress, strain and his physical impairment to the senior partner from Christmas 2001. He was given personal and emotional support by both partners. Attempts to recruit a new assistant for the Respondent proved unsuccessful. The partners did not accept the Respondent's resignation in April 2002. Later he tendered his resignation orally following the complaint made by Miss C at the end of June 2002. It was not accepted.
21. A Fellow of the Institute of Legal Executives with 20 years experience in dealing with civil litigation matters had been engaged. She proved an invaluable support. She had assisted the Respondent to reduce his workload. Another solicitor joined the firm in October 2002.
22. The Respondent maintained a supervisory role but no longer had conduct of personal injury work. He concentrated on non-contentious commercial work.
23. With regard to the claim of Miss C and the other two clients, none of the injuries sustained by them was sufficiently serious to require admission to hospital at the time of the accident. Payments had been made into Court by the Defendant but had been rejected by all three clients. All three payments into Court were below the multi-track

limit of £15,000. All of the clients complained of on-going symptoms and problems which they attributed to the accident. Counsel had been consulted on quantum and Counsel's Advice had been rejected by all three clients each of whom had unrealistic expectations of her likely settlement. The costs incurred were disproportionate to the nature of the accident and the injuries sustained.

24. The Defendant's solicitor had been very pro-active because of his concerns about the former conduct of the case by the consultant and the fact that he was dealing with a modest claim where costs were being unnecessarily incurred on behalf of the claimants.
25. The Respondent said he simply could not cope with the case and he should have transferred it. One client had failed to agree an appointment with the expert.
26. Once the Respondent found himself in difficulty in dealing with the claim, he made matters worse by his actions leading to the complaints against him.
27. The clients' claims for compensation together with the costs of their solicitors had been paid by Mellows' insurers, with Mellows meeting substantial costs together with the insurance excess. The Respondent had dealt with the insurers' solicitors on behalf of Mellows.
28. The Respondent had apologised to District Judge Short for his conduct. It was the Respondent's intention to apologise to the three clients.
29. The clients in addition to making complaints to The Law Society also complained to the Association of Personal Injury Lawyers, as a consequence of which the Respondent had resigned.
30. The Respondent had received a rebuke from The Law Society in January 1990 and in May 2002 he had been reprimanded.
31. He said he had very strong views of what was right and what was wrong. That might not sometimes coincide with other's views.
32. The Respondent had appeared before the Disciplinary Tribunal in 1992.
33. The Respondent accepted that in the matter of Miss C and others his conduct and behaviour was entirely wrong and unacceptable. It was sadly ironic that he should have made such a mess of this case particularly when he had spent a proportion of his professional career dealing with problem cases inherited from others.
34. The Respondent enjoyed the support of his partners. He had declined an invitation to become an equity partner. He had become responsible for a number of administrative matters at the firm and had played an active part in the growth and development of the firm.
35. The Law Society had renewed the Respondent's Practising Certificate subject to employment conditions.

36. The Respondent hoped that he might be permitted to continue to practise as a solicitor. He was proud of his profession, to which he had made a contribution and to which he hoped to be able to contribute in the future.

The Findings of the Tribunal

37. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
38. In June 1992 the Tribunal found the following allegations to have been substantiated against the Respondent. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars namely that he had:
- (i) failed to act in the affairs of his clients with due diligence;
 - (ii) deliberately or recklessly made representations which he knew or ought to have known were untrue and which he knew or ought to have known would mislead his clients.
39. On that occasion the Tribunal said:

"The Tribunal find the allegations to have been substantiated, indeed they were not contested. On the face of it the allegations made against this Respondent were of a very serious nature. The Tribunal has in the past made it plain that it considers the duty of a principal employing a young and newly qualified solicitor is to ensure that such an assistant solicitor, or indeed junior partner, is not overworked but this appears to be a clear example of this happening. Although deliberate deception is of the utmost seriousness, the mitigation offered by this Respondent was very strong. He was fortunate to have had a supportive family as a balance against the stress to which he was subjected. The Tribunal regretted that his present employers did not feel able to voice their support for him but it was clear that the Respondent was working within a strict regime where he was well supervised. The Tribunal recognises that practice as a solicitor carried inevitable and considerable stresses and strains. There is, of course, always someone to whom a stressed solicitor can turn and he should always be advised so to do.

The Tribunal considered that the appropriate sanction to be imposed upon the Respondent, having deliberately misled clients and third parties would have been to deprive him of his right to practise at least for a period of time. However, the Tribunal accept that the Respondent was young and inexperienced when he was expected to shoulder an enormous volume of work. He appeared to have had a breakdown. He had extracted himself from the position in which he endured considerable pressure, rehabilitated himself and taken up an appointment with a large and reputable firm. It is because the Respondent recognised his shortcomings, took hold of the situation and appears now to have been rehabilitated that the Tribunal feel able to be lenient in this exceptional case. The Tribunal order that the Respondent Kevin Richard Nutt, solicitor of "Northdale", 135 Main Street, Woodborough, Nottingham do pay a fine of £5,000 such penalty to be forfeit to Her Majesty

the Queen and they further order that he do pay the costs of and incidental to this application and enquiry, such costs to be taxed by one of the Taxing Masters of the Supreme Court."

40. In April of 2004 the Tribunal was dismayed to find that the Respondent had appeared before the Tribunal, albeit some time ago, to face allegations broadly similar to those which have been substantiated against him on this second occasion. The earlier Tribunal dealt with the Respondent in a way that was very lenient. It said that it had done so in part because of his youth and inexperience. In 2004 it could not be said that the Respondent was of a young age and was inexperienced in the solicitors' profession.
41. The Tribunal expressed concern that the Respondent did not appear to recognise the seriousness of his actions. Not only had he failed his clients, but he had misled them and he had misled the Court. The Tribunal did not believe that the Respondent wrote the letter of 3rd May as he asserts.
42. The Respondent referred to a number of mitigating circumstances not the least of which was the fact that he was subjected to a considerable pressure of work. It is in the nature of a solicitor's job that he does carry the stresses and the strains of a substantial burden of work, a great deal of which has to be completed against deadlines.
43. In the light of the earlier Tribunal decision the Tribunal reached the conclusion that the Respondent when put under pressure failed to act with the integrity, probity and trustworthiness that is required of a member of the solicitors' profession. There was a continuing pattern of behaviour. Mindful of its duties to protect the public and maintain the good reputation of the solicitors profession the Tribunal concluded that it was appropriate to impose a striking off order on the Respondent and it further ordered that he should pay the costs of and incidental to the application and enquiry in a fixed sum agreed by the Respondent.

DATED this 10th day of June 2004

on behalf of the Tribunal

I R Woolfe
Chairman