

IN THE MATTER OF DAVID ELLIS CHARITY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr A G Ground
Mr J Jackson

Date of Hearing: 29th July 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 Geoffrey Williams of Queen's Counsel, solicitor and partner in the firm of Geoffrey Williams & Christopher Green, Solicitor Advocates of 2a Churchill Way, Cardiff, CF10 2DW on 15th December 2003 that David Ellis Charity then of Camden Road, Tunbridge Wells (now c/o West Street Lane, Carshalton, Surrey) solicitor 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 Respondent were that he had been guilty of conduct unbecoming a solicitor in each of the following respects namely that he had:-

- (a) failed to produce accounting documents for inspection when properly called upon to do so contrary to Rule 34 Solicitors Accounts Rules 1998;
- (b) failed to deliver Accountant's Reports to the Law Society contrary to Section 34 Solicitors Act 1974 and the Rules made thereunder;
- (c) permitted one Kevin Gregory to be a signatory on his firm's client account contrary to Rule 34 Solicitors Accounts Rules 1998;

- (d) failed to comply with the Solicitors Indemnity Rules;
- (e) Improperly held himself out as a being a practising solicitor at a time when he did not hold a current Practising Certificate;
- (f) written an intemperate and insulting letter to another solicitor;
- (g) been convicted of an offence of driving with excess alcohol and disqualified from driving for three years;
- (h) failed to account to former clients;
- (i) failed to reply to correspondence from OSS
- (j) failed to close down his sole practice in an orderly manner.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29th July 2004 when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Applicant gave the Tribunal information as to due service of the proceedings and the Tribunal ordered that the matter should proceed.

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

The Tribunal orders that the Respondent David Ellis Charity c/o West Street Lane, Carshalton, Surrey, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 29th day of July 2004 and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,557.74.

The facts are set out in paragraphs 1 to 39 hereunder:-

1. The Respondent born in 1941 was admitted a solicitor in 1966 and his name remained on the Roll of Solicitors.
2. At all times material to this application the Respondent carried on practice as a solicitor on his own account under the style of Mahoney Mea ("MM"). As at February 2003 the Law Society records showed that the said firm was maintaining offices at:-
 - (a) 108 George Street, London
 - (b) 79 Carter Lane, Fleet Street, London
 - (c) 160 Balgore Lane, Romford, Essex;
 - (d) 6 Connought Mews, Connought Road, Ilford, Essex.
 However by that date the Respondent was not actively practising from any of the said addresses.
3. The Respondent's Practising Certificate for the practice year 1st November 2001 – 31st October 2002 was terminated by the Law Society on 20th January 2003 as the Respondent had not applied for a Practising Certificate for the practice year commencing 1st November 2002.

4. The Respondent had ceased to practise as a solicitor under the style of MM on or about 30th November 2002. On 1st July 2003 the Law Society resolved to intervene into the said practice on the grounds set out in Paragraph 1 Schedule 1 of the Solicitors Act 1974 (as amended) as follows:-

- 1(1)(c) - Breaches of the Solicitors Accounts Rules and the Solicitors Indemnity Rules;
- 1(1)(h)- Sole practitioner abandoning his practice; and
- 1(1)(k)- Uncertificated practice.

The Respondent did not appeal to the Court.

Allegation (a) – the inspection of the accounts

5. Upon notice duly given to the Respondent an inspection of his books of account was attempted by Ms B, a representative of the Forensic Investigation Unit of the OSS. A copy of the consequent report was before the Tribunal. The Respondent failed to make available for inspection such books of account as had been maintained. In her report Ms B noted the information set out below.
6. Ms B visited the offices at George Street and Carter Lane in London on 16th December 2002. The George Street office was vacant. The Carter Lane office was signposted as the office of a chartered surveyor. Staff at this office said that the Respondent sometimes rented space from them but they had not seen him for approximately three weeks. Staff also gave Ms B the name of a hotel in Kent where they believed the Respondent had been staying.
7. Ms B then met with the Respondent for approximately one hour at the lobby of the Wellington Hotel in Tunbridge Wells on 17th December 2002. At this meeting Ms B handed the Respondent a notice of inspection letter dated 16th December 2002. In addition to this meeting, Ms B managed to speak with the Respondent by telephone on 23rd December 2002.
8. During the course of these conversations, the Respondent said that he had been moving from hotel to hotel because he claimed that there was a contract out on his life, which related to a complaint he had made against another firm of solicitors. He also said that he had been in ill health having suffered concussion and added that he had not been well since his wife had left him.
9. The Respondent said that the Carter Lane address was still valid, however the other offices were no longer used. The Respondent said that the staff at the Carter Lane office passed telephone messages onto him as well as his post but added that he had not contacted the OSS to report his address changes.
10. The Respondent said that he became the sole practitioner in MM in 2000. He said that he had been assisted by Kevin Gregory, a trainee barrister, and Ms G a law student. The Respondent said that MM had handled only four or five client matters since he had been with the firm, adding that he had supervised KG's handling of these matters.

11. The Respondent said that he left MM in November 2002 when he became ill. He added that he left the firm because he could not trust KG and he did not think that the firm was going anywhere. The Respondent said that KG had possession of the files but most of them were dead matters. When asked if he had abandoned MM, the Respondent replied that he had not abandoned the firm, however he said that he may not have done all that he should have because of his illness.
12. The Respondent said that MM had never received any client funds. The Respondent said that the firm banked with Lloyds and he thought, but was not sure, that both himself and KG were signatories of the bank accounts. The Respondent added that KG maintained the firm's books and records, however he had never reviewed them.
13. Ms B informed the Respondent that he urgently needed to make arrangements for her to inspect the accounting books, records and matter files associated with MM. He said that he would arrange to obtain the information required for the inspection and that he would confirm the inspection date. The Respondent also asked that the inspection take place after the New Year as he was in the process of moving into a private residence as a lodger.
14. Since this meeting, however, Ms B had been unable to contact the Respondent.
15. On 6th January 2003, KG telephoned Ms B and he said that he had been receiving the Respondent's post from the staff at the Carter Lane office. KG said that the staff opened all of the Respondent's post, put the correspondence into one envelope and periodically forwarded it onto him. KG added that he had liaised with the Respondent generally on a weekly basis.
16. Letters were posted to the Respondent on 19th December 2002 and 6th January 2003 by Ms B requesting him to contact her or the OSS to arrange for her to proceed with the inspection. The letter addressed to the Respondent dated 6th January 2003 was returned to the OSS on 21st February 2003 annotated "return to sender".
17. A final letter was sent on 3rd February 2003 to the Respondent at both the Carter Lane address and his current residential address requesting that he contact the OSS within seven days. Ms B also left telephone messages for the Respondent with KG on 6th and 23rd January 2003. At the date of the report, however, the Respondent had not responded to Ms B's letters or telephone messages.

Allegation (b) – failure to deliver Accountant's Reports

18. The practice of MM was established in 2000. A client account was established with Lloyds Bank Plc and clients' funds were held. The Respondent was obliged to deliver to the Law Society annual Accountant's Reports and a further Report made up to the date upon which he ceased to hold clients' funds. No such Reports had been delivered.

Allegation (c) –the client account bank mandate

19. The only signatory to the office and client bank accounts maintained by MM was KG who was not a solicitor. KG could not properly operate the client account not being in any of the categories set out in Rule 23 Solicitors Accounts Rules 1998.
20. A copy of a letter from KG to the OSS dated 12th June 2003 was before the Tribunal in which KG had written:-

“I was the only signatory on the bank account with Lloyds as it was I who was personally responsible for the practice general running costs. I also paid for the insurance and payment to the Solicitors Indemnity Fund. It was agreed so that the account would be managed properly that all money withdrawn from the main account would have to be signed off by me only, but with Mr Charity the only signatory on the client account in order that this would not breach the Law Society rules. However Mr Charity was not able to come to the meeting with the bank due to some delay, which caused him never to be a signatory. The manager Mr Steve Wynne said someone must be a signatory temporarily and it would be best to then send Mr Charity the account form after the meeting for him to sign. After this was done the Bank would then remove my name (if instructed) off the client account mandate. However the form was sent to Mr Charity but it seems he never did receive it and the account was never updated.”

21. A copy of a fax from Lloyds Bank Plc enclosing bank statements from MM client account addressed to KG was before the Tribunal.

Allegation (d) – Indemnity Insurance

22. At the material time the insurance year for solicitors commenced on 1st September. By 1st September 2002 the Respondent had not put in place the required compliant Professional Indemnity Insurance, neither had he submitted an application for cover to the Assigned Risks Pool (“ARP”).
23. In or about October 2002 KG was seeking insurance cover for the firm . In November 2002 KG applied for cover to the ARP. On 30th November 2002 the Respondent signed a proposal to ARP.
24. The ARP offered cover for the period 1st September – 30th November 2002. The premium was paid on 10th January 2003 by a cheque drawn on MM Solicitors and signed by KG.
25. The firm required run-off cover subsequent to cessation of practice. This had not been obtained, as the premium had not been paid.

Allegation (e) – Improper holding out as being a solicitor

26. Section 1 of the Solicitors Act 1974 provides that no person shall be qualified to act as a solicitor unless, inter alia, he has a current Practising Certificate. Consequently if an uncertificated solicitor wishes to use the description “solicitor” then he should qualify it, e.g., by adding such words as “not practising” so as to avoid misleading.

27. By a letter of 23rd May 2003 Messrs Bolt Burdon Solicitors complained to the OSS that on 9th May 2003 outside the Court of Appeal the Respondent handed to Ms C of Bolt Burdon a business card on which he described himself as “Solicitor & Maritime Arbitrator”. On 21st May 2003 Ms C heard the Respondent at Wandsworth County Court tell the District Judge and the Court Usher that he was the defendant’s solicitor. Bolt Burden made enquiries and was told by the Law Society that the Respondent did not have a current Practising Certificate.
28. By a letter dated 16th November 2003 Ms C of Bolt Burden sent to the Applicant a copy of a statutory declaration improperly witnessed by the Respondent in June 2003 at a time when he did not have a current Practising Certificate.

Allegation (f) – The improper letter

29. The Court hearing referred to in paragraph 29 above involved the Respondent advising on GS in possession proceedings brought by his mother, Mrs S, who had instructed Messrs Bolt Burdon to act for her.
30. By a letter dated 20th May 2003 Mrs S complained to the OSS and enclosed a copy of a letter from the Respondent to Ms C of Bolt Burdon dated 15th May 2003. In the letter the Respondent had written:-

“I have now discussed this matter in depth with GS. I hope you will forgive me if I start by saying that your law firm have destroyed a family..... You advised Mrs S to enter into litigation, which was at all times unnecessary. You have given negligent advice to such an extent that your position is now entrenched.

I hesitate to put forward what possible motive there might be, other than you are amassing huge legal fees.

A solicitor who encourages an elderly lady to sue her own son merely to make more fees is a shyster.

I propose to have this letter printed in the Lawyer magazine and then you will be able to sue someone for libel.

Since last Friday, I have related the facts of this case to a number of lawyers, they all agree on one thing, your conduct was despicable.

Could you please let me have disclosure of all the relevant documents immediately. I am at present using the kitchen of 5 R Mansions as my office.”

Allegation (g) – the conviction

31. On 27th June 2002 the Respondent appeared in the West Kent Magistrates Court. He pleaded guilty to an offence of driving a motorcar with excess alcohol. He was fined £500 and was disqualified from driving for a period of three years, which could be reduced by nine months if the rehabilitation course was completed by a due date.

Allegation (h) – the failure to account

32. Messrs. Lister & Wood, Solicitors of South Norwood, were instructed to represent Mrs M in matrimonial proceedings. They wrote to the Respondent seeking the papers and requesting the return of funds paid on account.
33. The Respondent did not reply but on 26th September 2002 he wrote directly to Mrs M saying:-

“Very sorry about your Divorce Papers. I moved from 3 York Road on 23rd August, and all my files were packed into boxes and placed in storage, where they remain until I find a new flat. I am course working on it.

I quite understand your wish to appoint other solicitors!”

The Respondent failed to return the papers or the requested funds, neither did he give any account to his former client.

34. The Respondent was instructed by P Estates Ltd in a partnership matter. P Estates Ltd paid the Respondent £3,000 on account of costs. The matter did not proceed, P Estates Ltd requested the return of its funds and subsequently its solicitors made the same request. The Respondent neither returned the funds nor delivered an account and consequently a complaint was made to the OSS by the solicitors to P Estates Ltd on 4th September 2002.

Allegation (i). – Failure to reply to correspondence from the OSS

35. Having ceased to practise from the offices of MM the Respondent resided at various addresses on a temporary basis including at hotels and the homes of friends. The Respondent did not keep the Law Society advised of his whereabouts.
36. Copies of letters from the OSS to the Respondent written in respect of complaints and regulatory matters were before the Tribunal (pages 46 to 68 of the Applicant’s bundle). The Respondent failed promptly to reply.
37. On 19th June 2003 the Respondent telephoned the OSS and the OSS telephone attendance note recorded that the Respondent:-

“Disputes that there had been any breaches. Thinks it is simply competitor making a complaint against him. Said that as he is retired he does not feel he has anything to answer for. Has not been receiving any correspondence as he “moves around a lot”.”

38. The Respondent further telephoned the OSS on 23rd June 2003 and a copy of the relevant attendance note was before the Tribunal. On 27th August 2003 and by letter received on 5th September 2003 the Respondent wrote to the OSS but did not provide substantive replies to the various matters the OSS had raised.

Allegation (j) – abandonment of practice

39. The Respondent:-

- (a) failed to advise the Law Society of the closure of his various offices;
- (b) failed to advise the Law Society that he was ceasing to practise on 30th November 2002;
- (c) thereafter failed to advise the Law Society of his whereabouts from time to time;
- (d) allowed bank accounts in the name of MM to remain open after 30th November 2002;
- (e) permitted KG to operate the said accounts;
- (f) failed to put in place appropriate Professional Indemnity Run-Off Cover;
- (g) failed to make appropriate arrangements with respect to client files.

The Submissions of the Applicant

- 40. The Applicant had placed before the Tribunal copies of the correspondence between himself and the Respondent's son. In his letter of 18th May 2004 the Respondent's son said that he had Power of Attorney to act on his father's behalf and referred to his father's infirm mental and physical health. The Applicant in reply had stressed that should an adjournment be sought medical evidence should be put in.
- 41. In relation to allegation (a) despite sending letters to various addresses and leaving telephone messages it had been impossible for Ms B to get the inspection underway.
- 42. There was a strict obligation on solicitors to make their books available for inspection.
- 43. In relation to allegation (b) there was an outstanding requirement for a cease to hold report. There had been a small use of the client account as shown by the bank statements referred to at paragraph 23 above.
- 44. In relation to allegation (c) the Applicant did not allege that KG had operated the client account improperly nor to any significant amount but he had been mandated throughout.
- 45. In relation to indemnity insurance the ARP had pointed out in a letter of 18th December 2002 the need for Run-Off Cover but this had never been obtained.
- 46. The Respondent had quite improperly held himself out as a solicitor. His Practising Certificate had been terminated by the Law Society on 20th January 2003 as the Respondent had not applied to renew it. At a hearing before the Master of the Rolls on 30th March 2004 the Master of the Rolls had been content that the Practising Certificate had in fact been terminated on that date.
- 47. The statutory declaration had required re-witnessing by another solicitor.
- 48. In relation to allegation (f) Mrs S's letter had said that she was eighty-one years old and that she was sad at having to take action against her son. She noted that the Respondent appeared to have taken up residence along with her son at the house

which was the subject of the litigation. She was disgusted by the Respondent's letter to Ms C. In the submission of the Applicant no solicitor should ever write to another solicitor in the terms used by the Respondent. All concerned had been outraged and the Respondent's conduct had brought disgrace on the profession.

49. The Tribunal was asked to note in relation to the conviction that a lengthy period of disqualification had been imposed and a rehabilitation course referred to which suggested either a very serious offence or a drink problem.
50. The Respondent had failed to account to Mrs M or to P Estates Ltd. It appeared in relation to the latter that the Respondent had been dealing outside of his normal client account although the Applicant accepted that there might have been another client account in existence in Tunbridge. In view of the lack of cooperation with the Investigation Accountant however it was not possible to be certain of the position.
51. The Respondent appeared to have become itinerant. In the submission of the Applicant solicitors had a duty in conduct to keep the Law Society advised of their whereabouts so that correspondence in relation to professional enquiries might be effectively dispatched. It was generally speaking by correspondence that the OSS carried out its enquiries. The Respondent had failed in this duty and his elusive nature had made it impossible to have meaningful correspondence.
52. Abandonment of his practice had been one of the grounds for the intervention.
53. This was a sad case involving a short lived and small practice. There had however been conduct unbecoming over a wide range of allegations. The Respondent's failure at least to account to clients for their money and his holding himself out as a solicitor amounted to conscious impropriety.

The Findings of the Tribunal

54. The Tribunal considered carefully the documentation before it including all representations made in that documentation by the Respondent. The Tribunal was satisfied on the basis of the documents that the allegations were substantiated.
55. In relation to allegation (g) the Tribunal recognised that that allegation alone would not have brought the Respondent before the Tribunal but it was nevertheless substantiated along with a wide range of other allegations of conduct unbecoming a solicitor.
56. The Tribunal was particularly concerned about the failure to account for client monies and about the holding out as a solicitor when not holding a Practising Certificate. This was blatant misconduct.
57. The Tribunal had given serious consideration to striking the Respondent off the Roll of Solicitors in order to secure the protection of the public. The Tribunal had noted however the letter from the Respondent's son stating that his father was in a state of mental and physical infirmity. There were also references within the documentation to the Respondent having suffered a head injury and consequent ill health.

58. The Respondent was not present. His son who had Power of Attorney on behalf of the Respondent had indicated that the Respondent was content to retire from his life as a solicitor.
59. While very serious allegations had been substantiated against the Respondent and no professional medical evidence had been brought forward the Tribunal considered that in all the circumstances the protection of the public could be achieved by suspending the Respondent from practice for an indefinite period.
60. The Tribunal made the following order:-

The Tribunal ORDERS that the Respondent David Ellis Charity c/o West Street Lane, Carshalton, Surrey, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 29th day of July 2004 and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,557.74.

DATED this 30th day of September 2004

on behalf of the Tribunal

T Cullen
Chairman