No. 8966-2004

IN THE MATTER OF CIARAN WHELAN, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr A H B Holmes (in the chair)
Mr P Haworth
Mr G Fisher

Date of Hearing: 3rd June 2004

FINDINGS

of the Solicitors' Disciplinary Tribunal
Constituted under the Solicitors' Act 1974

An application was duly made on behalf of The Law Society by Geoffrey Williams of Queens Counsel of 2A Churchill Way, Cardiff CF10 2DW on 12th January 2004 that an Order be made by the Tribunal in directing that as from a date to be specified in such Order no solicitor should except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in its permission employ or remunerate in connection with the practice as a solicitor Ciaran Whelan of Mulgannon, County Wexford, Eire a person who was or had been employed or remunerated by a solicitor or that such other Order might be made that the Tribunal should think right.

The allegation made against the Respondent was that he having been employed or remunerated by solicitors but not being a solicitor had in the opinion of The Law Society occasioned or been a party to with or without the connivance of the solicitors by whom he was or had been employed or remunerated acts or defaults in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

The application was heard at the Court Room 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Geoffrey Williams appeared on behalf of The Law Society. The

Respondent had despatched a letter by email to Mr Williams with a copy to the Tribunal's office. That letter is set out in full under the heading "The Submissions of the Respondent".

In his emailed letter the Respondent said there was a direct conflict between what he did and advised his then clients as opposed their recollections as to what his advice to them at the time was.

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

The Tribunal Order that as from 3rd day of June 2004 no solicitor shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Ciaran Whelan of Mulgannon, County Wexford, Eire a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

The Facts upon which the Applicant relied are set out in paragraphs 1 to 11 hereunder:-

1. The Respondent's current address was Mulgannon, County Wexford Eire.

2. At all material times the Respondent was employed as a clerk by Messrs Attridge Solicitors of 196 Southward Park Road, Bermondsey, London SE16 3RP. He was no longer so employed.

3. Subject to the supervision of his principal, of whom no criticism was made the Respondent acted for SB and RB. In January 2000 they appeared in the Crown Court at Snaresbrook. They were convicted of drugs offences and were both sentenced to prison for a total of 7 years.

4. On 26th February 2002 the Court of Appeal allowed appeals by both men and quashed the convictions. By this time SB and RB were represented by a firm of solicitors at Twickenham.

5. On 27th March 2002 the Court of Appeal complained to the Office for the Supervision of Solicitors (the "OSS").

6. The particular concerns of the Court were that upon the conclusion of the Crown Court proceedings the question of appeal arose. Advice was obtained from Counsel for both SB and RB. On 2nd February 2000 Counsel had advised favourably with respect to SB. On 7th February 2000 Counsel advised favourable with respect to RB. Both Counsel settled Grounds of Appeal.

7. These documents were sent to the Respondent at Messrs Attridge within the statutory time limit.

8. SB and RB, who were in custody, were aware that there were prospects of success for their appeals.

9. The Respondent never lodged the appeals. Consequently an application for leave to appeal out of time had to be made on behalf of SB and RB. This was done by their new solicitors.

10. The Respondent's explanation was that he was awaiting the outcome of investigations and proceedings against the police officers involved in the case. The appeals succeeded on the basis of shortcomings in the police evidence in particular with regard to identification. This was no excuse for not issuing the appeals and pursuing them expeditiously.

11. The Respondent maintained that he told his clients of his approach and that they agreed. The Respondent had not made any record of such oral instructions and the clients did not give written instructions. RB and SB denied that they had so instructed the Respondent.

The Submissions of the Applicant

12. The Respondent's explanation of his tactical delay was unacceptable if true and also inherently unlikely. The following were salient matters:-

    (a) There were favourable advices from Counsel which did not depend upon the fates of the officers in the case.

    (b) The obvious and only proper course of action was to lodge the appeals. The Grounds could always have been amplified if appropriate at a later stage;

    (c) Given the nature of the advices it would be highly unlikely for the men in custody to have agreed to any delay at all;

    (d) The lack of notes and the views of Messrs RB and SB served to discredit the Respondent's version;

    (e) Given the nature of the advice the Respondent asserts he gave to his clients, it was surprising that he told his principal nothing about it.

13. The Respondent was experienced in undertaking cases such as those of RB and SB. A proper support and supervisory mechanism was in place at his employers' firm.

14. The Respondent failed in his duties to his clients and to his employers. As a direct result RB and SB spent considerably more time in custody than was necessary.

15. The Applicant invited the Tribunal to consider the written judgment of Lord Justice Buxton dated 26th February 2002 relating to the appeals of RB and SB and in particular where he found:-

    "Whilst in custody, both defendants were seen by a representative of Attridges. Both were assured that their appeals had been lodged, and that Attridges were considering applications for bail pending appeal on their behalf. This information has been obtained from Mr Barnes during a conference at HMP Springhill.

    Against this background the defendants apply for leave to appeal against their convictions and sentence out of time pursuant to s.18 (3) Criminal Appeal Act (1968).

    The same solicitor at Attridge's that had conduct of the defendant's case represents Mr K". (Charges had been brought against two allegedly corrupt policemen involving the case of SB and RB and Mr K was to be tried with them).

16. Lord Justice Buxton wrote to the OSS on 4th February 2003 pointing out:-

> "(i) The failure to lodge the appeal caused a serious injustice, with two men spending five months longer in prison than they should have done. The public interest in the proper administration of justice requires that matter to be adjudicated upon even though the clients themselves are for whatever reason not willing to make, or heave not been properly advised as to their ability to make a formal complaint
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> (ii) Delay in submitted proceedings causes difficulties for the court, as it did on this occasion. The court's rules are not imposed without reasons. It also, under the current jurisprudence of the court, exposes the client to the possibility of his appeal not being entertained at all. These are legitimate concerns on the part of the court, which it is entitled to look to The Law Society to control. That is so even if the client has a concurrent right of complaint".

The Submissions of the Respondent (his emailed letter 2.06.04)

17. "Dear Mr Williams

I write with reference to the hearing on 3rd June 2004.

I can confirm that I will not be attending nor will I be calling any evidence on my behalf. There is a direct conflict between what I did and advised my then clients as opposed to their recollections as to what my advice to them at the time was. At all times I acted in the best interests of these two clients. At no time did I purposely mislead them concerning the state of their appeals. Whilst it is absolutely right that the appeals were not lodged in the Statutory time limits, this was on my advice and with the express knowledge and consent of the two clients. Moreover, it was my intention once all material was to hand from the trial of the officers concerned to apply for an extension of time to lodge the appeals with the Court of Appeal. To this end I had obtained from Mr RA partner with AL copy documents in the form of statements and interviews of the Police Officers who had been charged and had furnished these upon the two clients in custody. It was with their full knowledge that these appeals had been delayed.

I did represent one of the defendants charged with the Police Officers and who was known to both defendants, Mr RK, however, following my attendance upon him whilst he was under arrest, I formed the view that there was the potential for a conflict of interest and I withdrew from the case. It seems to me that the clients somewhat viewed my association with K suspiciously he had been a client of mine for a number of years and that led to them changing solicitors, not because of any deliberate attempt by me to mislead them.

Whilst I acknowledge the fact that the appeals in this case were granted on the basis of Identification and not on the basis of possible corruption of Police Officers, it was not clear at the time that that would be the case. I believed that the appeals in this case would have been so much stronger had the information that I had been collating been appended on the original appeals. I had been employed since 1990 in Criminal Law and I believe that my standards had always been to the highest and never had I

been the subject of any complaints in the past and I refer to page 105 at para 11 "had there been evidence to show that Mr Whelans conduct or professional ability was suspect or had been questioned in the past I might have made a different decision. On the basis that Mr Whelan had a hitherto unblemished career at Messrs Attridges". This I believe sums up the standards and quality of the work that I was engaged in during my time in London and I feel that my reputation will be damaged beyond redemption should a finding be made against me that I purposely misled clients. I would ask one question, why would I do it? How long could the pretence be kept up without being found out. To whose benefit could it have been for, surely not mine.

I do not believe that I can add any more to the above and I would be grateful if this communication can be brought to the attention of the committee.

Respectfully
Ciaran Whelan".

The Tribunal's Findings of Fact

18. The Tribunal finds that there was an inordinate delay on the part of the Respondent and clearly such delay was of considerable significance to the two clients concerned. Despite the Respondent's written, but untested, evidence that he acted upon his clients' instructions, the Tribunal does not believe this to be the case. They reached this conclusion because he had not received such instructions in writing and had not made any written record of such instructions. The obvious course of action in all of the circumstances was to lodge the clients' appeals as there were favourable advices from counsel which did not depend upon the outcome of criminal proceedings brought against the Police Officers. RB and SB were in custody and it was inherently unlikely that they would give instructions to their solicitors to deal with their appeals in any way which would serve to delay their release from prison.

19. The Tribunal concluded that the Respondent had fallen very far short of the high standards required to be maintained by the solicitors' profession and those un-admitted persons employed within that profession and in all of the circumstances it was right that Order sought by The Law Society should be made. The Tribunal also concluded that it was right that the Respondent should bear the Applicant's costs in bringing the matter before the Tribunal.

20. The Tribunal made the Order set out above.

DATED this 16th day of July 2004

on behalf of the Tribunal

A H B Holmes
Chairman