

IN THE MATTER OF DAVID ANDREW GATHERER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr I R Woolfe
Lady Maxwell-Hyslop

Date of Hearing: 17th June 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 solicitor advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 20th January 2004 that David Andrew Gatherer solicitor of East Herrington, Sunderland, might be required to answer the allegations contained in the statement which accompanied the application and the Tribunal should make such order as it thought right.

On 31st March 2004 the Applicant made a supplementary statement containing a further allegation.

The allegations set out below are those contained in the original and the supplementary statement. The allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:-

- (i) Contrary to Rule 1 of the Solicitors Practice Rules 1990 and Principle 15.04 in the Guide to Professional Conduct of Solicitors (1996 and 1999 Edition) he acted and/or continued to act as solicitor when conflict(s) of interest existed between himself/his employees' interests and the interests of his client(s);

- (ii) He withdrew money from client account contrary to Rule 22(1) of the Solicitors Accounts Rules 1998;
- (iii) He utilised clients' funds for his own purpose;
- (iv) He misappropriated clients' funds;
- (v) He failed to keep accounts properly written up for the purposes of Rule 32(1) and (2) of the Solicitors Accounts Rules 1998;
- (vi) He failed to maintain appropriate accounting records for six years, contrary to Rule 32(9) of the Solicitors Accounts Rules 1998;
- (vii) He conducted a personal conveyancing transaction, through the firm's client account, contrary to Rule 13 of the Solicitors Accounts Rules 1998;
- (viii) He acted contrary to Rule 6 of the Solicitors Practice Rules 1990 in that he acted for both buyer and seller in a conveyancing transaction;
- (ix) He made a representation and/or provided information to the Investigating Officer that was misleading and/or inaccurate;
- (x) He acted in a way that was fraudulent, deceitful or otherwise contrary to his position as a solicitor and/or took advantage of his client(s);
- (xi) The conduct of the Respondent overall was such that gave rise to breaches of Rule 1 of the Solicitors Practice Rules 1990 in that his independence and/or integrity was compromised or likely to be compromised and/or the duty to act in the client's best interests was compromised or likely to be compromised and/or the good repute of the solicitor or of the solicitors' profession was compromised or likely to be compromised;
- (xii) On 23rd September 2003 he was tried and convicted upon indictment of conspiracy to defraud at Newcastle Crown Court and on 16th January 2004 was sentenced to 18 months imprisonment.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NY when Jonathan Richard Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

At the opening of the hearing the Applicant told the Tribunal that he had been in correspondence with the Respondent who had agreed that the substantive hearing should deal with the allegation contained in the supplementary statement (allegation (xii)) and that the remaining allegations should lie on the file. In a letter dated 15th June 2004 addressed to Mrs Ralph, the Tribunal's Assistant Clerk, the Respondent confirmed that to be his position. That letter is set out below under the heading "The submissions of the Respondent".

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

The Tribunal Order that the Respondent David Andrew Gatherer of East Herrington, Sunderland, 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 a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 3 hereunder:-

1. The Respondent, born in 1951, was admitted as a solicitor in 1984.
2. At the material times the Respondent practised as a solicitor on his own account under the style of Carpenters Solicitors from offices at Court Buildings, 19a Old Elvet, Durham, County Durham, DH1 3HL. The Respondent had at some point in time traded under the style of Carpenters Solicitors and Estate Agents. The Respondent had previously been in partnership but since March 2002 practised on his own account.
3. On 23rd September 2003 the Respondent appeared at Newcastle Crown Court and following trial was convicted upon indictment of conspiracy to defraud. He was sentenced to 18 months imprisonment on 16th January 2004. The Tribunal had before it a copy of the Certificate of Conviction and a transcript of the sentencing remarks of His Honour Judge Lancaster.

The Submissions of the Applicant

4. The Respondent had been convicted of a criminal offence involving dishonesty and had had a custodial sentence imposed upon him.
5. The Tribunal was invited to consider the sentencing remarks of His Honour Judge Lancaster when sentencing the Respondent and in particular when he said:-

“You conspired to deceive them and cheat Mrs F of £4,500 ... By any standards this was a mean offence, a cold and calculated crime. It was a fraud you were both prepared to see through to its conclusion and may have succeeded but for the change of circumstances which revealed it.

Both of you were in a position of trust. You abused your privileged position to defraud Mrs F.

David Gatherer, you abused your position as a solicitor and as an estate agent. You enabled Joyce Watt to carry out her deception. You provided the money for the purchase. You sought to cover up the fraud by permitting Mrs Watt to use a false identity. I am sure that you later removed material from files to attempt to conceal the deception ... David Gatherer, you must take the greater blame, as you were a qualified solicitor in a privileged and trusted position. Your offending is graver on account of that. The sentence on you, therefore, must be greater ... David Gatherer, the sentence is 18 months imprisonment.”

The Submissions of the Respondent (his aforementioned letter of 17th June 2004)

6. “Dear Mrs Ralph

Re: David Andrew Gatherer 8973/2004 17th June 2004

Due to being subject to a Home Detention Curfew, 7am to 7pm, I am not able to attend the Tribunal Hearing on 17th June 2004. It is suggested that matters proceed upon the Conviction 23rd December 2003. Matters pertaining to the Rule 4 Statement to lie on the file. I would respectfully concur with this proposal and would wish the Tribunal to accept this letter as my acceptance of this course of action. My non-attendance should not be perceived as any disrespect to The Tribunal, Mr Jonathan Goodwin or the Profession.

I would wish it to be noted that I do not accept that I was guilty to the Indictment or any criminal act or acts. However I do acknowledge that I had the opportunity to put my case before a Jury and a guilty verdict was reached by a majority.

I accept that I permitted a course of conduct to be perpetuated at my office which was adverse and contrary to the strict conduct expected of me as a Solicitor. For this I have reaped an unpleasant harvest. The consequence of such will be experienced for a number of years to come.

I was a solicitor for 20 years and in these 7300 days which, but for the exception of 7 days or less, I served the Community extremely well and exercised my judgement professionally. I would wish to be remembered for the 99.9% of my career rather than the blot of 0.1%. From my former client's letters of support and comments made by former colleagues I am heartened to discover it is the 99.9% that is uppermost in their minds.

I have co-operated with questions and queries made of me by those who have been charged with the responsibility of the intervention. I believe all issues are resolved in this regard. Indeed from a recent encounter with a Senior Professional Colleague dealing with such I was complimented in the manner in which I dealt with matters before, during and after intervention. This was fine praise indeed and I believe indicative of my conduct as a Solicitor over the years. Sadly this has now been tarnished.

I am deeply sorry for my shortcomings. It is irrelevant whether they are for a period of 0.1% or less, they reflect badly on the Profession. Equally I have remorse for the individual I am perceived to have let down. I have paid and continue to pay a high price but I can not and do not expect any less if the Profession is to continue to retain its considerable stature in the eyes of the Public.

Yours sincerely
David Gatherer”

The Decision of the Tribunal

7. The Tribunal found the allegation to have been substantiated. The conviction of a solicitor for a criminal offence involving dishonesty flies in the face of the fundamental requirement that a member of the solicitors' profession be a person of the highest integrity, probity and trustworthiness. The Tribunal had taken into account the contents of the Respondent's letter of 17th June 2004 and had no reason to believe that the position which he had adopted was sincere. Nevertheless in order to protect the public and the good name of the solicitors' profession the Tribunal considered it right that the Respondent should be struck off the Roll of Solicitors and that he should pay the costs of and incidental to the application and enquiry (including those relating to allegations not proceeded with) and that such costs should be subject to a detailed assessment unless agreed between the parties and should include the costs of the Investigation Accountant of the Law Society.

Dated this 27th day of July 2004
on behalf of the Tribunal

A H Isaacs
Chairman