

IN THE MATTER OF DAVID JOHN BARRATT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H Isaacs (in the chair)
Mr A G Gibson
Mr G Fisher

Date of Hearing: 9th September 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the then Office for the Supervision of Solicitors ("OSS") on 20th February 2004 by David Elwyn Barton Solicitor Advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE that David John Barratt solicitor of Barry, Vale of Glamorgan, 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:-

- (a) He misled and made false statements to clients about the manner in which he was conducting their case, thereby compromising or impairing his duty to act in their best interests, and compromising or impairing his integrity and good repute and that of the solicitors' profession;
- (b) He failed to reply promptly to correspondence from the OSS.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th September 2004 when David Elwyn Barton appeared as the Applicant and the Respondent was represented by Mr Mark Tempest of Counsel.

The evidence before the Tribunal included the admissions of the Respondent and the oral evidence of Mr Timothy George Hackett.

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

The Tribunal orders that the Respondent, David John Barratt, of Barry, Vale of Glamorgan, 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 £3,316.

The facts are set out in paragraphs 1 to 16 hereunder:-

1. The Respondent, born in 1970, was admitted as a solicitor in 1994 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was carrying on practice as an assistant solicitor employed by Davies Sully and Wilkins solicitors of 3 Station Terrace, Caerphilly, CF38 1HD. The Respondent was currently employed as an assistant solicitor by J A Hughes solicitors.
3. In about April 2000, when the Respondent was working at Davies Sully and Wilkins, he took over the conduct of a boundary dispute on behalf of Mr and Mrs O who were clients of the firm. The matter had been previously handled by another person in the same firm. The nature of the case required the Respondent to instruct and work with both Counsel and a surveyor. On 23rd November 2000 the Respondent wrote to Mr and Mrs O in these terms:-

“We have therefore forwarded papers to Mr Bickford-Smith [of Counsel] asking him to advise at his earliest possible convenience”

The statement was untrue because the Respondent did not in fact send any instructions to Counsel.

4. The letter of 23rd November 2000 was sent by the Respondent following his receipt from Mr and Mrs O of a surveyor's report which they had obtained. They sent the report to the Respondent on 3rd October 2000. Their expectation was that Counsel would promptly see their papers and advise before making a court application. A letter from Mr Bickford-Smith's clerk was before the Tribunal which recorded that his first involvement occurred on 28th April 1999 when he was instructed to advise Mr and Mrs O. He did so on 10th June 1999 and was paid for that piece of work. His second involvement occurred in December 1999, following which he advised Mr and Mrs O in conference in his chambers. These two pieces of work predated the Respondent's involvement. Counsel was not involved again until October 2003 when he received instructions from the Respondent's former employers, the Respondent having by then left the firm.

5. Over the months following their letter of 3rd October 2000 Mr and Mrs O provided the Respondent with further information about their case, as well as enquiring about the progress with Counsel.
6. On 8th April 2001 Mr and Mrs O wrote to the Respondent in connection with an offensive sign put up by their neighbours. On the telephone on 9th April the Respondent informed Mrs O that the letter and accompanying photograph would be sent to Counsel. This was never done.
7. On 18th April 2001 Mr and Mrs O wrote again to the Respondent about the sign and sought advice. He stated to them on the telephone that day that Counsel was preparing his advice and that they would soon be able to proceed to court. This was untrue.
8. On 21st April 2001 Mr and Mrs O wrote to the Respondent about a further incident with the neighbours and he informed Mrs O on the telephone on 23rd April that details would be forwarded to Counsel. This was not done. As stated above, Counsel had never been instructed.
9. In order to deal with Mr and Mrs O's requests for information about the progress with Mr Bickford-Smith, the Respondent informed Mr and Mrs O on various occasions by telephone from about June 2001 onwards that he was in the process of withdrawing instructions from him, and that he had approached alternative Counsel from Chambers in Cardiff. He gave Mr and Mrs O a variety of reasons why Mr Bickford-Smith had not been able to deal with his earlier instructions, all of which were untrue. He stated that he had become Queen's Counsel, that he had taken on a multi-million pound dispute which was taking up his time, and that having spoken on several occasions with his clerk it was apparent that they would have to wait an unacceptably lengthy period of time.
10. The Respondent then told Mr and Mrs O that he had sent instructions to alternative Counsel in Cardiff. He informed them that Counsel had been in contact with the surveyor. Neither was true.
11. The Respondent then informed Mr and Mrs O that he had approached a third Counsel in view of the inactivity of the second Counsel in Cardiff. He said he had complained to the Head of Chambers and had given an ultimatum. Both these statements were untrue. He informed Mr and Mrs O that he had instructed the third Counsel, having personally delivered the papers himself and obtained a commitment to deliver an opinion within 28 days. None of this was true and the statements were made to disguise the fact that the Respondent had not undertaken any work on the case after June 2001. The absence of any work was evidenced by a letter from Davies Sully and Wilkins dated 27th January 2003. The second paragraph of that letter confirmed that the file showed no communications between the Respondent and any others after 9th June 2001. The file showed no record of any other barristers having been instructed.
12. Following the Respondent's statement that he had instructed a third barrister, he made a number of arrangements with Mr and Mrs O for site visits which he stated that the third barrister required. The Respondent made and cancelled four such site visits. This led to him informing the clients on 13th January 2003 that Counsel did not in fact require a site visit and could prepare his opinion on the documents. None of this

was true. In the Respondent's letter of 14th May 2003 he proffered an apology for indicating to Mr and Mrs O that site meetings were to take place.

13. By letter dated 21st January 2003 Mr and Mrs O were informed by Davies Sully and Wilkins that the Respondent had left the firm. It was at that stage that they were informed of the true position.
14. In a letter dated 14th May 2003 from the Respondent to Mr O the Respondent admitted that instructions were never sent to Mr Bickford-Smith and that his representation that he had or would instruct two further barristers were not true.
15. On 8th May 2003 the OSS wrote to the Respondent asking him for an explanation of his conduct. On 23rd May the OSS wrote again. The Respondent replied to that letter stating that Mr and Mrs O had withdrawn their complaint because he had provided them with a written apology. By letter dated 3rd June 2003 the OSS informed the Respondent that he was required to provide his explanation notwithstanding the apology. In the absence of a reply to that letter a further letter was sent on 16th June and again on 3rd July 2003. The Respondent did not reply to those letters within the period requested.
16. The Respondent was referred to the Tribunal on 6th August 2003.

The Submissions of the Applicant

17. The Respondent had admitted the allegations and had admitted the Statement of Mrs O dated 10th February 2004 which stated that the Respondent had misled Mr and Mrs O.
18. The Respondent's failure to instruct Mr Bickford-Smith was compounded by the Respondent informing Mr and Mrs O that he would be instructing other Counsel. This reinforced the allegation by the Applicant that this was dishonest conduct. There was no alternative way of looking at the Respondent's behaviour. In summary the Respondent had the conduct of Mr and Mrs O's case from April 2000 until January 2003 when he left his then employers. During that period of time he made a series of statements about the conduct of their case which were untrue and misleading. In so doing he breached Rule 1 of the Solicitors Practice Rules 1990 in the manner alleged, and further he was dishonest. None of the Respondent's conduct could be attributed to momentary aberrations. His actions constituted a course of conduct.
19. In relation to allegation (b) the Respondent did not respond as promptly as he should have done to correspondence from the OSS. The Tribunal expected Respondent solicitors to correspond properly with their regulatory body.

The Submissions on behalf of the Respondent

20. The Respondent had admitted both allegations and had written his letter of 14th May 2003 to his clients apologising.

21. Allegation (a) had been put as an allegation of dishonesty and the Respondent accepted dishonesty.
22. The Respondent knew that the Tribunal would be considering striking his name off the Roll of Solicitors. Any dishonesty by a solicitor was entirely unacceptable. It was submitted however that there were degrees of dishonesty and the Tribunal was asked to consider certain factors.
23. On 23rd November 2000 when the Respondent told his clients that he had instructed Mr Bickford-Smith he had in fact dictated those instructions and thought they had been sent out. At that stage his conduct was not dishonest. He later discovered that he had been wrong.
24. From that point things got out of control and the Respondent said things which were not true in order to avoid owning up to the original error. This was a case of weakness and a failure to own up to mistakes, not of deep-rooted dishonesty. It was obvious that the Respondent would be discovered. The Respondent had accepted Mrs O's statement but submitted that there had been no plan of dishonesty.
25. The Respondent had been under pressure at work and at home with two young children. He had had difficulty both dealing with the civil work and starting a new criminal department. This was no reflection on his then firm and the Respondent accepted that he should have sought help from someone in the firm. The firm had indicated that the Respondent was not working as hard as some other solicitors at that level but the Respondent had possibly not been able to take as much pressure as others.
26. The Tribunal would want to consider the effect on clients and on public confidence in the profession. The matter had been a difficult boundary dispute with an apparently unpleasant neighbour. The delay had not however compromised the clients' legal rights and the matter had been resolved.
27. Mr O's attitude was important. What he had wanted was an apology. Mrs O had said that she felt let down and misled but she did not characterise herself as a victim of dishonesty. The clients had been affected but not gravely. There had been no financial gain to the Respondent.
28. In relation to public confidence the Respondent was now working exclusively in criminal law at J A Hughes. His work was largely Magistrates' Court advocacy and duty solicitor work which was a public service aspect of the profession.
29. It was submitted that exceptionally the matter could be dealt with by a large financial penalty and a condition on the Respondent's Practising Certificate that he practise only at J A Hughes or such other practice as the Law Society might approve. The Respondent was supervised by Mr Hackett which would ensure that nothing similar would occur in the future.
30. In relation to allegation (b) only one letter had not been replied to. This type of allegation was usually dealt with by the Tribunal by the imposition of a fine of a minimum £1,000. It was submitted that the Tribunal might consider imposing a total fine of £10,000 coupled with the restriction on the Practising Certificate referred to

above. Alternatively the Tribunal might consider a suspension with future supervision, although it was submitted that this would achieve little more than a financial penalty.

31. The Respondent's present employers had obvious concerns so there was no guarantee that the Respondent would remain employed. He had been under threat of losing his livelihood and reputation, which were severe penalties in themselves.

The oral evidence of Mr Hackett

32. Mr Hackett, Solicitor Advocate and partner in J A Hughes, and supervisor of the Respondent, said that the Respondent's knowledge of criminal law was good and up to date. He was an able advocate on behalf of the firm's clients. Client questionnaires indicated that 95% or more rated the Respondent's service as excellent.
33. Mr Hackett gave details of two expressions of dissatisfaction and two complaints made against the Respondent since he commenced at the firm on 20th January 2003. These included dissatisfaction by a client in a road traffic accident matter when the client said the Respondent had told him action had been taken when it had not. A further matter of dissatisfaction involved a licensing matter and that case and other licensing work had now been sent to another fee earner.
34. There was also a complaint relating to a road traffic matter where the Respondent had, in Mr Hackett's view, taken certain justifiable steps but Mr Hackett would have taken a further step. The second complaint was a long-running and difficult case where the Respondent had entered guilty pleas in the absence of a client and the client said he had not so instructed him. New solicitors had been instructed and the matter would be decided in due course by a District Judge.
35. The level of supervision provided to the Respondent was fairly high and Mr Hackett gave details. The firm was concerned at the allegations before the Tribunal and would reflect on any decision made by the Tribunal even should that decision allow the Respondent to continue in practice. If the Respondent remained at the firm Mr Hackett would provide close supervision. The supervision would be as effective as it could be but could never be 100%.
36. J A Hughes had learnt of the matter of Mr and Mrs O from the Respondent's previous firm prior to the Respondent writing his letter of apology.

The Findings of the Tribunal

37. The Tribunal found the allegations substantiated, indeed they were not contested.

Previous appearance before the Tribunal

38. On 13th February 2003 the following allegations were substantiated against the Respondent, namely that he had been guilty of conduct unbecoming a solicitor in each of the following respects:-

- (a) He compromised or impaired or was likely so to do, his good repute and that of the solicitors' profession;
- (b) He failed to comply with the terms of an undertaking given to John Collins and Partners solicitors, given in connection with the sale of 29 Coleridge Crescent, Hendrefoilan Woods, Killay, Swansea.

39. The Tribunal in 2003 accepted that the Respondent did not intend to be in breach of the undertaking he had given and when he found somewhat to his surprise that he was he took steps to put the matter right. The Tribunal noted that the Respondent had made early admissions and had cooperated with the Law Society and its representative. The seriousness of a breach of a professional undertaking had to be marked by a fine which was tempered somewhat by the facts of this case and the Tribunal imposed a fine of £2,500 upon the Respondent together with costs.
40. The Tribunal on 9th September 2004 had carefully considered the evidence and the submissions including the submissions in mitigation made on behalf of the Respondent. The Tribunal had decided however that the evidence made it clear that the Respondent had been a danger to his clients and to the reputation of the profession. As Counsel for the Respondent had recognised, an admission of dishonest behaviour was so serious that it was likely to lead to a strike off. The arguments advanced on behalf of the Respondent that the Tribunal could, exceptionally, deal with the matter by a fine and the imposition of a condition requiring supervision were not regarded by the Tribunal as persuasive. The Respondent had persistently lied to his clients over a long period of time and Mrs O had described herself and her husband as feeling very let down and misled by the Respondent. Pressure of work was not an excuse for dishonest behaviour over a prolonged period. The Tribunal was grateful to Mr Hackett for attending in support of the Respondent while giving frank evidence as to the concerns of his current employers. The Tribunal was satisfied however that the appropriate penalty in all the circumstances was to strike the name of the Respondent from the Roll of Solicitors.
41. The Tribunal made the following order:-
- The Tribunal orders that the Respondent, David John Barratt, of Barry, Vale of Glamorgan, CF62 8HB, 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 £3,316.

Dated this 15th day of October 2004
On behalf of the Tribunal

Mr A H Isaacs
Chairman