

IN THE MATTER OF DAVID GEOFFREY BURT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J C Chesterton
Ms A Arya

Date of Hearing: 9th November 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 Ian Paul Ryan, partner in the firm of Bankside Law Solicitors, Thames House, 58 Southwark Bridge Road, London, SE1 0AS on 26th May 2004 that David Geoffrey Burt solicitor of Low Fell, Gateshead, might be required to answer the allegations contained in the statement which accompanied the allegation and that such order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to make an amendment to the allegations contained in the Rule 4 statement. The Respondent agreed and the Tribunal consented thereto. The allegations below are set out in the agreed amended form.

The allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars, namely:-

- (i) That he failed to inform a client that her case had been struck out;
- (ii) That he failed to act in a client's best interests;
- (iii) That he misled a client to believe that her case was ongoing and that court hearings were taking place when in fact her case had been struck out;

- (iv) That he misled a client as to the amount of money due to her from the terms of a settlement;
- (v) That he signed a settlement agreement on behalf of a client without her authority;
- (vi) That he utilised clients' monies for the purposes of other clients;
- (vii) That he utilised monies belonging to the firm of Watson Burton for the purposes of other clients;
- (viii) That he misled another firm of solicitors into paying a sum of money directly to the wrong person;
- (ix) That he misled a client as to the terms of settlement of their case;
- (x) That he misled his employers in relation to a complaint by a client and in particular that he failed to inform his employers that a case had been struck out.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Ian Paul Ryan appeared as the Applicant and the Respondent was represented by Ronald Bradbeer, solicitor of Eversheds Solicitors, Central Square South, Orchard Street, Newcastle Upon Tyne, NE1 3XX.

The evidence before the Tribunal included the admissions of the Respondent and the following documents were handed up at the hearing: a CAB Reference Questionnaire; a CAB letter offering a post to the Respondent; a statement of income and expenditure; two earlier Findings of the Tribunal (6632/1994 and 8743/2003) to which the Tribunal was referred by the Respondent.

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

The Tribunal order that the Respondent David Geoffrey Burt of Low Fell, Gateshead, 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 £3,250.

The facts are set out in paragraphs 1 to 19 hereunder:-

1. The Respondent, born in 1965, was admitted as a solicitor in 1991. His name remained on the Roll of Solicitors.
2. At all times material to the allegations the Respondent was employed as an associate at Watson Burton Solicitors, Newcastle Upon Tyne.
3. The Respondent acted for Dr D in a claim she was making against Zurich Insurance (Zurich) in respect of their failure to pay under a Permanent Health Insurance Policy. The Respondent had issued proceedings whilst at his previous firm where he had been an assistant solicitor. Dr D had insisted that he continue to act for her when he moved to his new firm.
4. On 14th May 1998 an order was made that an application should be made to fix a date for hearing by 17th September 1998 and that in the event of there being no such

application by 2nd March 1999 the case would be struck out as at the 2nd March 1999. No such application was made and the case was therefore struck out in March 1999.

5. Neither the Respondent nor the defendant's solicitors realised that the matter had been struck out until August 1999. On 5th August 1999 it was agreed that the Respondent should liaise with the court to confirm the position and on 25th August 1999 the court confirmed that the claim had been struck out. The matter was not at that stage statute barred and the issue of further proceedings might still have been possible.
6. The Respondent continued to write to Dr D in terms that suggested he was continuing to negotiate with Zurich and that her case was ongoing.
7. The Respondent also continued to negotiate with Zurich's solicitors and he came to an agreement with those solicitors in January 2000. The effect of the agreement with Zurich was as follows:-
 - a) Dr D was reinstated into the Insurance Scheme;
 - b) Her level of benefit was £469.83 payable from 25th January 2000;
 - c) The settlement sum agreed as being the total benefit under the policy from 25th August 1999 to 24th January 2000 was set at £10,118.31.
8. Dr D was unaware of this agreement and it was signed without her authority.
9. The Respondent wrote to Zurich's solicitors on 1st February 2000 confirming that the terms of the agreement were acceptable.
10. The Respondent then wrote to Dr D on the same date to confirm the weekly payments that she would receive. He also referred to 'payment of back monies' and a lump sum payment of £34,276.66. This lump sum figure was incorrect. The Respondent then sent a cheque for £10,118.31 to Dr D on 13th March 2000.
11. Further correspondence took place between the Respondent and Dr D. In one of those letters dated 14th June 2000 the Respondent enclosed a revised agreement that he had drafted to confirm that he had asked Zurich to consider her claim for a capital sum in respect of the total disability benefit. This was rejected by Zurich's solicitors on 26th June 2000.
12. In the meantime the Respondent continued to write to Dr D in terms that suggested that her claim was continuing. He also arranged for Dr D to meet with Professor E for a medical assessment and Dr D duly attended those meetings and also meetings with Counsel.
13. The Respondent continued to negotiate with Zurich's insurers although he was negotiating matters that had been dealt with in the agreement previously signed. The Respondent still continued to write to Dr D as if her claim was ongoing and at one point he produced a Court Order that was incorrect.

14. Dr D made a complaint against the Respondent to his employer in August 2001. The Respondent continued to behave towards Dr D and the firm as if her claim was ongoing, describing the case to his Principal as “back on track”.
15. Dr D renewed her complaint on 15th October 2001 and in her further letter of complaint she specifically referred to the outstanding sum of £62,000 owed by Zurich. The Respondent continued to write to Dr D in terms suggesting that her claim was ongoing. In particular, he referred to a court hearing on 6th November 2001 and he took statements from both Dr D and her husband ostensibly in preparation for this hearing. The Respondent promised that the payment of £62,555 in respect of arrears would be paid into Dr D’s account by 1st November. The Respondent also sent a memo to his Principal confirming that the client did not want to pursue her complaint.
16. Subsequently the Respondent wrote to Dr D confirming that the application at court had been adjourned until 7th November and enclosing a Court Order which referred to an ex gratia payment. The Respondent stated that Dr D should receive the ex gratia payment by 14th November 2001. The Court Order did not exist.
17. The Respondent arranged for a payment that was due to another client of the firm to be diverted to Dr D’s account.
18. Following an investigation by the employer firm, it became apparent that the Respondent had made a number of other unauthorised payments to Dr D from office account and from the client accounts of other clients and that he had misled other clients in the course of making those payments.
19. Some of those matters were raised with the Respondent at a meeting with his employers on 23rd November 2001. At that meeting, the Respondent made a number of admissions.

The Submissions of the Applicant

20. The Respondent had admitted all of the allegations at a very early stage. Indeed in his letter addressed to the Office for the Supervision of Solicitors dated 19th May 2003 the Respondent said “I found myself in difficulties on a limitation issue within the Dr D claim and on the interpretation of a Court Order (the latter problem being cleared with Nabarro Nathanson acting for the defendant). Foolishly I did not “come clean” with the partners at Watson Burton, the firm which I had just joined, and I then found myself caught in a descending stairway of acts, none of which I realised I should have taken”.
21. The Respondent’s actions had caused distress and aggravation. They had adversely affected the reputation of his employers’ firm. It was hard to believe that the Respondent acted in the way that he did because he must have had the expectation that he would be found out.

The Submissions made on behalf of the Respondent

22. The Respondent admitted the facts and all ten of the allegations made against him. It could be said that the Respondent had acted in the best interest of his client Dr D. He thought he would achieve the satisfaction of the client but the means by which he sought to achieve that were wrong. There was no element of personal gain for the Respondent as the result of his actions.
23. The Respondent's own sense of propriety had caused him to recognise that he should not in the future practise as a solicitor. He had no wish to expose himself to the possibility of getting matters so wrong again. The Tribunal was invited to make an order to allow the Respondent's name to remain on the Roll of Solicitors even though he had made it plain that he never again intended to practise as a solicitor.
24. Dr D had insisted that he retain conduct of her case when he changed firms in May of 1999. The Respondent had been on probation at his new firm for some three to four months. Things started to go wrong with Dr D's case whilst he was still on probation. This had caused consternation to the Respondent who was concerned about his own future and that of his family.
25. Dr D's case had automatically been struck out by the Court in June 1998. The Order was framed in such a way that neither the Respondent nor his opponent were sure whether the action remained alive or not. The Court itself had not known the status of the action and it had taken two different judges to determine that the action should be struck out. By 1999 it was clear that the case had been struck out by the Court.
26. The Respondent apologised for his action. He recognised that he had been very wrong and he regretted that deeply. The Respondent had been dismissed by his employers and as a result of his difficulties he had lost his wife and family.
27. The Respondent accepted that his actions had had an impact on his employers and upon the public perception of their firm. Not only had the firm's reputation been affected but there were financial implications for them. The Respondent had shattered his own professional position, had lost his marriage, had lost the income from his professional employment and found himself with an uncertain future. The Respondent had been foolish but had not been dishonest as the Respondent had not carried out his actions with a view to any personal gain. He had not enjoyed a high lifestyle.
28. The matter had taken a considerable period of time to reach the Tribunal and had been hanging over the Respondent's head for a length of time.

The Tribunal's Findings

29. The Tribunal found all of the allegations to have been substantiated and indeed they had been admitted.

The Tribunal's Decision and its Reasons

30. The facts upon which the allegations were based amounted to a serious catalogue of deception on the part of the Respondent. The deception had been maintained over a long period of time and included misuses of client's monies, applying one client's monies to benefit an unconnected client in order to maintain the cover-up of the Respondent's failings. The Respondent had not only deceived his client but he had deceived his employer firm.
31. The Tribunal concluded that the Respondent's conduct demonstrated a serious case of conscious impropriety. The Tribunal further concluded, having applied the test in the case of Twinsectra -v- Yardley and Others [2002] UKHL 12 that any solicitor would recognise that the way in which the Respondent had behaved was dishonest and the Tribunal was in no doubt that the Respondent himself recognised the dishonesty of his actions. The Tribunal reject the argument that the Respondent was not dishonest because he derived no personal financial gain. The failure, he admitted, to "come clean" with his employers and the continuance in the admitted "descending stairway of acts" were in part to avoid discovery and loss of employment, the retention of which was in the Respondent's financial interest.
32. The Tribunal gave the Respondent credit for his remorse, his apology and his early admissions. However the Tribunal in fulfilling its duty to protect the public and the good reputation of the solicitors' profession concluded that it was right that the Respondent should be struck off the Roll of Solicitors. It was right that he should pay the costs of and incidental to the application and enquiry. The Respondent had agreed to pay costs in the sum of £3,250 inclusive and the Tribunal ordered that he should pay such costs as a fixed sum.

Dated this 31st day of January 2005
On behalf of the Tribunal

A G Ground
Chairman