

IN THE MATTER OF CHRISTOPHER HAWKING, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Gibson (in the chair)  
Mr I R Woolfe  
Ms A Arya

Date of Hearing: 12th May 2005

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Ian Paul Ryan, solicitor and partner in the firm of Bankside Law Solicitors at Thames House, 58 Southwark Bridge Rd, London, SE1 0AS on 20<sup>th</sup> August 2004 that Christopher Hawking, a former solicitor of Carsington, Matlock, Derbyshire, 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.

On 19<sup>th</sup> October 2004 the Applicant made a Supplementary Statement containing a further allegation and seeking a direction.

The allegations set out below are those contained in the original and the supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a Solicitor in each of the following particulars, namely:

- (i) that he failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998;
- (ii) that he failed to act in the best interests of a client;

- (iii) that he failed properly to supervise his practice.
- (iv) that he failed to comply promptly or at all with a decision of an Adjudication Panel of The Law Society to pay compensation of £1,000 to a complainant.

The evidence before the Tribunal included correspondence addressed by the Respondent to the Tribunal and to the Applicant and a letter dated 12<sup>th</sup> May 2005 sent by Mr P to the Tribunal confirming that he had not been paid the compensation awarded to him by The Law Society.

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

The Tribunal orders that the Respondent, Christopher Hawking of Carsington, Matlock, Derbyshire, former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and it further Orders 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 Tribunal further Orders that the Direction made by the Law Society on 23<sup>rd</sup> June 2004 following a review be treated for the purposes of enforcement as if it is an Order of the High Court.

**The facts are set out in paragraphs 1 to 13 hereunder:-**

1. The Respondent, born in 1959, was admitted as a solicitor in 1987. He voluntarily removed his name from the Roll of Solicitors on 29<sup>th</sup> April 2004.
2. At all material times the Respondent was in practice on his own account under the style of Hawkings Solicitors at Hogarth House, 17 Mundy Street, Heanor, Derbyshire, DE75 7EB, having previously practised under the style of Gylers Solicitors from the same address, and at a second office at 100a High Street Alfreton, Derbyshire, DE55 7BE.
3. Upon due notice to the Respondent, the Investigation Officer of The Law Society ("the IO") inspected the Respondent's books of account on three occasions and produced Reports dated 14<sup>th</sup> August 2000 (First Report), 30<sup>th</sup> October 2001 (Second Report), and 27<sup>th</sup> February 2003 (Third Report). These Reports were before the Tribunal.

Failing to keep accounts properly written up – (Third Report)

4. The IO identified that the books had not been kept properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 and in particular he noted the following:
  - (i) as at the date of the inspection on 17<sup>th</sup> November 2002, the most recently completed client account reconciliation was 30<sup>th</sup> September 2002;
  - (ii) there were 446 office credit balances totalling £28,879.13;

- (iii) the accounting records dealing with office money were unreliable;
  - (iv) there was a cash shortage of £1,391.31.
  - (v) At the beginning of the inspection, the IO had asked the Respondent whether the books of account were up to date and the Respondent had replied that the books were only a few days behind and that only a few office credit balances remained which were of a value less than £100. This was not the position.
5. The Respondent's attention had previously been drawn to the need to address office credit balances at the conclusion of earlier inspections in June 2000 and October 2001. The Respondent had signed an On-Site Certificate on 21<sup>st</sup> June 2000 confirming that he would take action to correct the breaches listed on the Certificate which included the fact that the accounting records and client reconciliations were not up-to-date and that significant office credit balances existed.

#### Failing to act in clients best interests – (Third Report)

6. The IO reviewed the file of Mr D. This was a personal injury matter which had been undertaken on the basis of a conditional fee agreement. The file did not contain a copy of the agreement and although the Respondent was asked to provide a copy, this had not been received at the date of the IO's third Report. Mr D had not been able to locate a copy of the conditional fee agreement.
7. Damages were agreed at £25,000 and these monies were received by the Respondent on 23<sup>rd</sup> April 2002. They were paid to the client on 14<sup>th</sup> June 2002. No explanation was provided by the Respondent.
8. The firm's costs were agreed with the insurance company at £2,494.30. A further account was forwarded to the client referring to a success fee of £3,579.04 and a shortfall on costs of £257.60.

#### Supervision – (Third Report)

9. The Respondent operated two offices with a total of eight staff including one part-time assistant solicitor who worked three days a week. The Respondent told the IO that he "floated" between the two offices on the days when the assistant solicitor was not at work.

#### Mr P's compensation

10. On 17<sup>th</sup> February 2004, an Adjudicator of The Law Society directed, inter alia, that the Respondent pay compensation to Mr P of £750 within seven days of any review of the Adjudicator's decision. Both parties had fourteen days to request a review.
11. The Respondent requested a review of the Adjudicator's decision by a letter dated 10<sup>th</sup> March 2004.

12. The review was considered by an Adjudication Panel of The Law Society on 23<sup>rd</sup> June 2004. The Adjudication Panel varied the original decision and increased the award of compensation to £1,000. The Respondent was required to pay the compensation within seven days of receiving notification of the Adjudication Panel's decision.
13. The Respondent was notified of the decision by a letter dated 13<sup>th</sup> July 2004. The Law Society wrote again on 28<sup>th</sup> July 2004 and 26<sup>th</sup> August 2004. The Respondent had not paid the compensation to Mr P.

### **The Submissions of the Applicant**

14. The Respondent's failure to keep his books of account properly written up was a serious matter and was aggravated by his failure to address the position despite two previous inspections by The Law Society when inadequacies were pointed out to him and the Respondent had confirmed that he would take action to correct the breaches of which he had been notified.
15. In the matter of Mr D, the success fee charged by the Respondent had amounted to 130 per cent of the firm's costs. There was no evidence of any agreement having existed or any indication that this figure was appropriate. The client had not been paid his damages until some three weeks after they had been received by the Respondent.
16. In connection with the supervision of the office at which a part-time assistant solicitor attended on three days a week, the Respondent was unable to satisfy the requirements of Practice Rule 13 on the days when the assistant solicitor was not there. The Respondent was the only qualified person at the firm and could not properly supervise both offices of the practice on those days.
17. Compensation had been ordered by The Law Society to Mr P. The Respondent had not paid it.

The Submissions of the Respondent contained in his letter addressed to the Tribunal dated 25<sup>th</sup> February 2005

#### 18. Allegations (i), (ii) and (iii)

- "1. The client account reconciliation was just over a month and a half behind. A very experienced Accounts Manager was employed by me full time to deal with all aspects of the firm's accounts.
2. With regard to office credit balances the figure quoted was taken from the firm's computer records. These records were inaccurate as I told both the Investigating Officer and subsequently the Applicant. There were in fact only a few actual office credit balances and of those which did exist a large number of those arose prior to my purchase of the business. The computer records were inaccurate because documentation had not been passed through the system to the firm's accounts department to be entered onto the computer. As this had not happened the computer records showed the apparent existence of

office credit balances when in fact they did not exist. Work was undertaken to correct this situation.

3. The cash shortage identified was made good and would have been in any event when the up to date reconciliation had been completed and monthly management accounts prepared.
4. With regard to the allegation of failing to act in a client's best interests, part of the file in question which contained a number of documents of an evidential nature including the Conditional Fee Agreement had been mislaid. A search was made but the file could not be located as I explained to the Investigating Officer. This was one of many cases the firm handled for clients under Conditional Fee Agreements. So far as I am aware the client has never made a complaint about the way in which I conducted his claim, or about the fees charged, to either me or the Applicant despite, as I understand it, being contacted directly by the Investigating Officer. The client was extremely happy with the outcome of his claim and the amount of compensation he received.
5. I did experience difficulties with supervision which was one of the reasons why I closed the firm and ceased to trade. I had considerable difficulties in recruiting an assistant solicitor which was not for the want of trying. A solicitor was employed by me part time and worked at least three days a week, often more than this because of the supervision issue. Although I was based primarily at one office I did visit the branch office virtually every day, the travelling time between the two offices being only 15 minutes.

#### Allegation (iv)

1. My view was, and still is, that the complaint made by Mr P was unjustified and groundless. Whilst I do not intend to go into detail, I would say that Mr P was a very demanding client and often very vocal as is evident from some of the letters he has written to the Applicant. I represented him in a protracted partnership dispute which lasted for several years before eventually coming to trial where he was successful on the issue of liability. The Defendant in the action was obstinate and obdurate throughout which resulted in a year's delay after trial before damages were assessed by the court and it was a long time after that before any monies were paid by the Defendant in satisfaction of the judgment. I note that the correspondence from the Applicant is exhibited to the supplementary statement in support of the Application but my letter dated 10<sup>th</sup> March 2004 is not exhibited although it is referred to in the above statement.
2. I refer to my letter to the Applicant's Solicitor dated 9<sup>th</sup> November 2004, a copy of which was sent to the Tribunal's Clerk, a further copy is attached. I have recently been informed by the Applicant's solicitor that the Legal Services Ombudsman does not anticipate completing her Report until the end of April 2005. I would ask that the contents of my above letter be taken into account when a decision is made on this Application. What would be the position if the Tribunal found against me and then subsequently the Legal Services Ombudsman decided, following her review, that the Applicant was

wrong to reach the decision it did on Mr P's complaint to them? Surely this would then mean that the Applicant should not have imposed any sanction against me. If that had been the case and the Applicant had rejected Mr P's complaint then there would have been no disciplinary proceedings issued against me with regard to this matter. In these circumstances I fail to see how these proceedings can continue until the Report from the Legal Services Ombudsman is available. Quite apart from this an agreement was negotiated with Mr P which, so far as I was concerned, concluded all financial matters between us."

19. By letters of 9<sup>th</sup> May the Respondent wrote both to the Tribunal and to the Applicant, saying that he had written to the Legal Services Ombudsman following the receipt of a copy of the Ombudsman's Report but he had not received any reply. Prior to the preparation of the Report the Respondent had written to the Ombudsman stating that he wanted to put forward a number of points regarding the complaint but he had heard nothing from the Ombudsman in reply. He considered that the Ombudsman had not taken his views into account before preparing the Report, which he believed should have been done, bearing in mind that the complainant's views were considered.

### **The Tribunal's Decision**

20. The Tribunal found allegations (i), (iii) and (iv) to have been substantiated.
21. The Tribunal found allegation (ii) not to have been substantiated. There might well have been a good reason why the Respondent did not make an immediate payment of damages to Mr D. Mr D appeared to have been entirely satisfied with the handling of his case and had made no complaint about costs or anything else. He appeared not to deny that there had been a Conditional Fee Agreement even though no copy of it could be found. The Tribunal did not consider there was any evidence before it which would lead it to conclude that the Respondent had not acted in the best interests of his client.
21. With regard to the other allegations which the Tribunal found to have been substantiated, the Tribunal considered that the Respondent's breaches of the Solicitors Accounts Rules were serious. Those rules were in place to protect the public and any breach could not be ignored. The Tribunal agreed with the Applicant that the situation was aggravated by the fact that the Respondent's breaches had been pointed out to him and he had agreed to remedy them but had not done so.
22. The Rules in place relating to the supervision of solicitors' practices were also there to ensure that the public was protected. The Respondent, in employing a part-time solicitor at one of his offices, had flouted that Rule.
23. Although the Tribunal noted what the Respondent had said about the Legal Services Ombudsman's Report, The Law Society had made a direction and it appeared that the Legal Services Ombudsman had not required The Law Society to take any further steps in connection with this matter. In such circumstances the Tribunal concluded that it was right that the direction made by The Law Society that £1,000 compensation should be paid to Mr P should be treated for the purposes of enforcement as if it were an Order of The High Court. The failure of a solicitor to comply with the direction

made by his professional body served to damage the good reputation of the solicitors' profession.

24. Having found the allegations to have been substantiated against the Respondent, the Tribunal concluded that it was right to Order that the Respondent, a former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of this Tribunal. It was also right that he should pay the costs of and incidental to the Application and Inquiry to include the costs of the Investigation Officer (or Accountant) of The Law Society. It made the directions sought in connection with the compensation to be paid to Mr P.

Dated this 24th day of June 2005

On behalf of the Tribunal

A G Gibson  
Chairman