

IN THE MATTER OF JOSEPH AARON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C. Potter (in the chair)
Miss T Cullen
Mrs V Murray-Chandra

Date of Hearing: 3rd May 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London, WC1R 4BX on 20th September 2004 that Joseph Aaron solicitor of Chigwell, Essex, 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 particulars namely:

- (a) that the Respondent failed to apply for and obtain qualifying insurance outside the Assigned Risks Pool (ARP) on or prior to 1st September 2003 for the Respondent's practice;
- (b) that he failed to apply to join the Assigned Risks Pool (ARP) on or prior to 1st September 2003 and/or upon making such application, failed to return the completed proposal form to the Assigned Risks Pool and/or failed to make payment of the premium due;
- (c) that he failed to provide details of indemnity insurance in his application form relating to his Practising Certificate for the year 2003/2004;

- (d) that he failed to reply to correspondence from The Law Society.

By a supplementary statement of Peter Harland Cadman dated 14th January 2005 it was further alleged against the Respondent that he had been guilty of conduct unbefitting a solicitor in the following particulars namely:

- (e) that he failed to comply with a direction of the Compliance Board Adjudication Panel dated 19th October 2004.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd May 2005 when Peter Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

Prior to the commencement of the substantive hearing the Tribunal heard evidence from the Applicant as to due service upon the Respondent and was satisfied that the relevant documents had been duly served and that the substantive hearing should proceed.

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

The Tribunal Orders that the Respondent, Joseph Aaron of Chigwell, Essex, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,995.94 inclusive of VAT.

The facts are set out in paragraphs 1-6 hereunder:

1. The Respondent, born in 1944 was admitted as a solicitor in 1984 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent had carried on practice on his own account under the style of Joseph Aaron & Co at City Gate House, 399-425 Eastern Avenue, Gants Hill, Ilford, Essex, IG2 6LR.

Allegations (a)-(d)

3. The Respondent practised as Joseph Aaron & Co. The Law Society wrote to the Respondent concerning his professional indemnity insurance cover on 17th November 2003, 2nd December 2003, 26th March 2004, 19th April 2004, 27th May 2004 and 23rd June 2004. The Respondent had at no stage replied to that correspondence.
4. The Respondent was under an obligation to have professional indemnity cover for the year 2003/2004. He failed to obtain such cover. He was under an obligation to provide details of his insurance cover on his application for a Practising Certificate but failed to do so. The matter was considered by an Adjudicator on 8th July 2004, who determined to refer the conduct of the Respondent to the Tribunal.

Allegation (e)

5. A complaint was lodged by Mrs F with The Law Society. This related to various allegations of inadequate professional service. Following First Instance Decision in April 2004, the matters were considered by an Adjudication Panel on 12th July 2004 and after a request for review by the Respondent were reconsidered on 19th October 2004.
6. The Respondent was directed to pay compensation to Mrs F in the sum of £1,500 within seven days of the notification of the decision. As the Respondent had failed to comply with the decision the matter was considered by an Adjudicator on 26th November 2004 who resolved to refer the Respondent's conduct to the Tribunal if he failed to comply with the decision within 14 days. The Law Society wrote to the Respondent on 7th December 2004 notifying the Respondent of this decision. The compensation had not, however, been paid.

The Submissions of the Applicant

7. The Applicant had served two Notices to Admit documents on the Respondent but no Counter-Notices had been received. The Applicant would seek to prove the allegations on the basis of the documentation before the Tribunal
8. The compensation due to Mrs F remained outstanding. The Applicant sought leave to amend his Rule 4 Statement and seek an Order that the relevant direction be enforceable as if it were contained in an Order made by the High Court.

The Findings of the Tribunal

9. The Respondent had submitted no defence to the allegations nor made any submissions. The Tribunal considered the documentation and was satisfied on the basis of that documentation that the allegations were substantiated.
10. The Tribunal declined the Applicant's requests to amend his Rule 4 Statement to seek an Enforcement Order as no prior notice of that application had been given to the Respondent.

Previous appearances of the Respondent before the Tribunal

11. At a hearing in March and May 1998 the following allegations were substantiated against the Respondent namely that he had:
 1. Acted in breach of the Solicitors Accounts Rules 1991 in the following particulars:
 - (a) contrary to Rule 27 failed to make available his books of account for inspection by The Law Society's Investigation Accountant upon notice given as to time and place, alternatively unreasonably delayed in so doing;

- (b) acted in breach of Rules 7 and 8 of the said Rules in that he drew from clients account monies other than in accordance with the principle of the said Rules.
2. Failed to account to his clients Mr and Mrs M in respect of monies received by way of a wasted costs order from the Lord Chancellor's Department alternatively failed with reasonable expedition so to account.
 3. Failed to act in accordance with instructions given to him by the same clients and in respect of the payment of expert fees, alternatively failed with reasonable expedition so to act.
 4. Failed to observe or fully to observe with reasonable expedition the provisions of an Order by an Assistant Director of the Office for the Supervision of Solicitors acting under delegated power and in respect of an award for inadequate professional service made pursuant to the Solicitors Act 1974 as amended by the Courts and Legal Services Act 1990.
 5. Failed to act in accordance with the direction of the Compliance and Supervision Committee of the Office for the Supervision of Solicitors made on 14th May 1997.
 6. By virtue of each and all of the aforementioned been guilty of conduct unbecoming a solicitor.
12. The Tribunal in 1998 said as follows:

"The Tribunal had some sympathy for the Respondent in his belief that he was being victimised by The Law Society. It was inevitable that an investigation into a solicitor's accounts caused disruption to his firm. At the time when the Respondent refused to produce his accounts he had already been the subject of two inspections within a short period of time. On the first occasion trivial breaches had been found and on the second he had been given "a clean bill of health". As he pointed out he had also complied with the requirement that he file Annual Accountants Reports with The Law Society both in the sense that the Reports had been filed on time and had revealed no financial accounting discrepancies.

The Respondent felt vindicated when he discovered the internal memorandum of the Bureau suggesting that he might be "wrong footed", and when he discovered that Mr O's assertion that the Monitoring Unit visit had been of a routine nature only and had not been deliberately instigated because of the Respondent's history with the Bureau had been wrong.

The Respondent believed that The Law Society had not been acting with an appropriate degree of fair-mindedness and transparency and that was why he felt justified in his refusal to produce his books of account. His view was that this Tribunal might not take any step which would in effect uphold an unlawful act perpetrated on behalf of The Law Society.

The Tribunal does not consider that it should criticise The Law Society or any members of its staff, suffice to say that the Tribunal agrees with the Respondent that The Law Society and those to whom it delegates its powers do have a clear duty to act in a way which is fair and unbiased.

The Tribunal recognises that The Law Society and the OSS have the very difficult task of ensuring that high standards are employed in handling a vast number of complaints about solicitors. The Tribunal accepts that any member of staff of the OSS could not be expected to recall the small detail of every case. Further The Law Society had to balance its duty of fairness to individual solicitors against its duty to protect the public and the good reputation of the solicitors' profession. The Law Society was entitled to expect the utmost degree of cooperation from solicitors.

In this case it was common ground that a number of complaints had been received about the Respondent. He enjoyed a reputation for being disputatious. He was argumentative and retained his own opinions with a tenacity that was a remarkable as it must have been irritating for those members of his professional body delegated to deal with him.

It has to be said that to some degree the Respondent was the author of his own misfortune because of his antagonistic attitude. It was inevitable that his uncompromising refusal to cooperate led to the arousal of suspicion as to his behaviour. The Respondent abandoned his action to have The Law Society's decision reviewed judicially. The Tribunal was not the proper forum to consider those matters.

Every solicitor is obliged to be fully cooperative when his own professional body is attempting to carry out any investigation. It had to be said that being a solicitor brought a number of benefits but that there were also burdens which had to be shouldered. The requirement of compliance with the requirements of the rules and regulations concerning professional conduct was one of those burdens which could not be ignored or avoided.

In short the Respondent was not entitled to refuse to produce his books of account and he had been in breach of that important rule. There were considerable mitigating circumstances however and the Tribunal was not minded to impose a substantial sanction upon the Respondent in respect of allegation 1. It was also not minded to impose a substantial sanction in respect of the breach of Rules 7 and 8, which matters were not in any event pressed by the Applicant.

The Tribunal felt compelled to take a far more serious view of the allegations relating to the Respondent's relationship with Mr and Mrs M. The Respondent's behaviour in this matter had been outrageous. Not only had Mr and Mrs M had to endure the anxiety of a number of days in court when their matter went part-heard, but they had the further anxiety of learning that the matter could not proceed to a conclusion and would have to begin all over again then to be confronted with the Respondent's intransigence in sorting out the question of the wasted costs met by the Lord Chancellor's Department.

The Respondent failure to settle fees of an expert witness led to Mr M being named as a Defendant in civil proceedings brought by the expert witness's firm, causing him even further anxiety.

The Tribunal find the Respondent's suggestion that the expert witness's fee should either not have been paid or reduced because of the inadequacy of the assistance given by him most unattractive. Payment from the Lord Chancellor's Department had been by way of an indemnity to Mr and Mrs M and clearly was intended to settle the expert witness's fee which had been fixed upon taxation. In the unlikely event of a fee being re-negotiated at that late stage in the proceedings, it would have been proper for any monies saved to have been paid back to the Lord Chancellor's Department.

The Respondent caused a great deal of trouble to his own professional body and clearly had failed fully to observe requirements made of him by that body. Indeed it came to light during the course of the disciplinary hearing that the Respondent accepted that there was yet a further sum due to Mr and Mrs M. It was not part of the Tribunal's function to ascertain the figure. Mr M had put in a calculation. The Tribunal would take a very serious view indeed of the Respondent if he had not finally resolved the position with Mr M within twenty eight days of the filing with The Law Society of these Findings.

The Tribunal are of the opinion that the Respondent reached a stage where he was so determined to score a success in a re-negotiation of the expert witness's fee that he could no longer "see the wood for the trees". The Tribunal hoped the disciplinary proceedings would be a lesson to him and that he would never again go to such extraordinary lengths to satisfy the beliefs which he held dear to the obliteration of the interests of others, in particular the interests of his clients.

To mark the seriousness with which the Tribunal viewed the Respondent's shortcomings, the Tribunal imposed a fine of £2,000 upon the Respondent and ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed, which the Tribunal recognised were likely to be in a substantial figure."

13. At a hearing in February and July 2002 the following allegations were substantiated against the Respondent namely that he had been guilty of conduct unbecoming a solicitor in that:
- (1) [not substantiated]
 - (2) He had failed or alternatively failed with reasonable expedition to reply to correspondence and enquiry addressed to him by the Bar Council, the Solicitors Complaints Bureau (SCB) and the Office for the Supervision of Solicitors (OSS).
 - (3) [found substantiated by the Tribunal but Respondent's appeal allowed by the Divisional Court].

- (4) He, as a proposed assignee of an underlease of office premises, did exchange contracts direct with the proposed assignors, whom he knew to be represented by solicitors, without the knowledge of those solicitors.
- (5) In the same matter having inserted a date for completion in the contract last referred to he entered into occupation on or about that date without the knowledge of the proposed assignor's solicitors without payment of the completion monies and at a time when no licence to assign to him had been granted by the lessors.
- (6) [withdrawn]
- (7) [not substantiated]
- (8) [not substantiated]
- (9) [not substantiated]
- (10) [not substantiated]
- (11) [not substantiated]
- (12) Had failed to comply with Directions duly made pursuant to Schedule 1A of the Solicitors Act 1974 (inadequate professional services).
- (13) [found substantiated by the Tribunal but Respondent's appeal allowed by the Divisional Court]
- (14) [found substantiated by the Tribunal but Respondent's appeal allowed by the Divisional Court]

14. The Tribunal in 2002 said:

"The Tribunal has looked at the Respondent's behaviour in the round. The Tribunal has taken a careful note of what another division of the Tribunal said about the Respondent in 1998.

It was a matter for regret that the Respondent, who had been granted some sympathy by the previous Tribunal, had again not assisted himself by adopting an antagonistic and uncooperative attitude. It appeared that the Respondent continued to enjoy a reputation for being disputatious. He continued to be argumentative and continued to retain his own opinions with a fierce tenacity.

It is the Tribunal's view that the main overall failing of the Respondent was his inability to see how his actions affected other people and how his attitudes and actions were perceived by others.....

Bearing in mind that this was not the first appearance of the Respondent before the Tribunal, it gave very serious thought to the imposition of the

ultimate sanction. The Tribunal concluded that the allegations substantiated against the Respondent were far too serious to be marked by the imposition of a financial penalty and concluded that in order to demonstrate to the Respondent that his behaviour would not be tolerated and further in order to protect the good reputation of the solicitors' profession it was right that the Respondent be suspended from practice for a period of two years. His behaviour would be regarded as disgraceful by right minded members of the public and of the profession.

Because deliberate and culpable dishonesty had not been found against the Respondent the Tribunal ordered that the period of suspension would not come into force until the 1st October 2002. The Tribunal further indicated that should the Respondent lodge an appeal against the Tribunal's Findings and Order within the period permitted for the lodgement of such an appeal, then the sanction would remain suspended until the outcome of such an appeal was known.

The Tribunal further ordered that the Respondent should pay the whole of the costs of and incidental to the Application and enquiry, to be subject to a detailed assessment if not agreed between the parties. The Tribunal did not seek to apportion any of the costs as it was the Tribunal's view that it was right that The Law Society should have required the subject matter of the allegations to be aired at a hearing before the Tribunal and, even where formal allegations had been found not to have been substantiated against the Respondent, he was in each and every case through his negligent and/or unsatisfactory behaviour directly responsible for the concerns expressed and the allegations made."

15. The Tribunal in 2002 found the Respondent guilty of misleading although not guilty of deliberate deceit or concealment. The Respondent's appeal against the relevant allegations was allowed by the Divisional Court and the penalty was reduced to a period of suspension of one year.

Hearing on 3rd May 2005

16. The Tribunal on 3rd May 2005 was gravely concerned that this was the Respondent's third appearance before the Tribunal. The Tribunal took account of the fact that the Respondent's appeal against the Findings of the Tribunal in 2002 had been allowed in part but serious allegations had remained substantiated against him and he had been suspended from practice for a year. The allegations substantiated against the Respondent on the present occasion demonstrated that he continued to show scant regard for either his regulatory body or members of the public. He had not had the appropriate insurance in place and had failed to respond to efforts by his own professional regulatory body to establish the position. He had failed to comply with the direction made by his own regulatory body to pay compensation to a client and the client remained unpaid. This was serious misconduct which affected the public's faith in solicitors. The characteristics of the present complaints were similar to those found against the Respondent previously. The Respondent had not learnt a lesson from his previous appearances. The Tribunal had a duty to protect the interests of the public

and to uphold the reputation of the profession. In the absence of any explanation or mitigation from the Respondent the Tribunal was satisfied that the appropriate penalty was to strike the name of the Respondent off the Roll of Solicitors.

17. The Tribunal Ordered that the Respondent, Joseph Aaron of Chigwell, Essex, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,995.94 inclusive of VAT.

DATED this 21st day of June 2005
on behalf of the Tribunal

R J C Potter
Chairman