

IN THE MATTER OF PURCELL ROBERT MICHAEL BROWN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Mr S N Jones
Mrs V Murray-Chandra

Date of Hearing: 8th November 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 Jonathan Richard Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 17th January 2005 that Purcell Robert Michael Brown of Martock Gardens, London N11, might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

- (i) That contrary to Rule 7(1) of the Solicitors Accounts Rules 1998 (the SAR) he failed to rectify breaches to the SAR promptly on discovery.
- (ii) That contrary to Rule 19(1) of the SAR he failed to pay a disbursement promptly, or in the alternative, transfer same to client account promptly.
- (iii) That contrary to Rule 20(2) of the SAR, he failed to pay a disbursement promptly, or in the alternative, placed in a client account.

- (iv) That contrary to Rule 22(5) of the SAR, he withdrew monies from client account which exceeded the monies held on behalf of the client.
- (v) That contrary to Rule 32 of the SAR he failed to keep his accounts properly written up.
- (vi) That contrary to Rule 32(1)(c) and/ or Rule 32(4) of the SAR he failed to keep accounting records properly written up to show dealings with office money.
- (vii) That contrary to Rule 32(7) of the SAR he failed to carry out the required reconciliations.
- (viii) That contrary to Rule 34(1) of the SAR he failed to produce records for inspection when required to do so by the Investigation Officer.
- (ix) That he utilised clients' funds for the benefit of other clients.
- (x) That he utilised clients' funds for his own benefit.
- (xi) That he failed to exercise adequate and/ or proper supervision of staff and/ or ensure that his practice was properly and adequately supervised by a person qualified to supervise contrary to Rule 13 of the Solicitors Practice Rules 1990.
- (xii) That he failed to discharge professional disbursements promptly and/ or claimed disbursements from the Legal Service Commission not supported by corresponding invoices.
- (xiii) That he failed to comply with the terms of an undertaking dated 17th October 2003 given to The Law Society and/ or its representative.
- (xiv) That by letter addressed to The Law Society and received on 2nd July 2003, he made representations that he knew or ought to have known were misleading and/ or inaccurate.
- (xv) That he failed to respond to correspondence from The Law Society.
- (xvi) That he failed to discharge the professional fees due to Dr S, contrary to Rule 1 of the Solicitors Practice Rules 1990 and/ or Principle 20.01.
- (xvii) That he failed to comply with a County Court judgment dated 5th September 2003, contrary to Rule 1(d) and (f) of the Solicitors Practice Rules 1990 and/ or Principle 21.14.
- (xviii) That he failed to discharge the professional fees due to Mr W, contrary to Rule 1 of the Solicitors Practice Rules 1990 and/ or Principle 20.01.
- (xix) That he failed to comply with a County Court judgment dated 19th December 2003, contrary to Rule 1(d) and (f) of the Solicitors Practice Rules 1990 and/ or Principle 21.14.

- (xx) That he failed to deliver an Accountant's Report that for the year ended 31st May 2003, due for delivery on or before 30th November 2003, contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8th November 2005 when Jonathan Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

At the opening of the hearing the Applicant explained that he had complied with the Tribunal's order relating to substituted service. The Respondent had not made contact either with Applicant or the Tribunal's office. An email (from Mr Ian Craine) received in the Tribunal's office on 8th November 2005 at 9.40am was handed up at the hearing.

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

The Tribunal ORDERS that the Respondent, PURCELL ROBERT MICHAEL BROWN of Martock Gardens, London, N11, 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 £24,217.88

The facts are set out in paragraphs 1 to 29 hereunder:-

1. The Respondent, born in 1961, was admitted as a solicitor in 1992.
2. At all material times the Respondent carried on practice on his own account under the style of Purcell Brown & Co from offices at John Gilpin House, 867-869 High Road, Tottenham, London N17 8EY. It was understood that the firm ceased on 11th January 2004, and the remnants of the practice were the subject of an intervention by The Law Society on 19th February 2004. The Respondent did not hold a current Practising Certificate.

Allegations (i), (iv), (vii) and (ix)

3. On 6th October 2003 a Law Society Investigation Officer (the IO) commenced an inspection of the books of account at the Respondent's offices. The IO's report dated 9th January 2004 was before the Tribunal.
4. The client bank account transactions had not been posted to the firm's computer system since 31st May 2003 with the result that the client accounting records were incomplete. The last reconciliation of the client bank statement to the client cash book was for the month ended 31st May 2003; no reconciliations were found to have included a comparison of the firm's liabilities to clients as shown by a list of balances extracted from the client's ledger, against the reconciled client bank account.
5. Where disbursements had been paid from the firm's office bank account they were not always recorded on the office side of the relevant account within the client's ledgers.

6. In view of the foregoing, the IO did not consider it practicable to express an opinion as to whether funds held on the client bank account were sufficient to cover the firm's liabilities to clients. However, the IO did establish that a minimum cash shortage of £19,452.31 existed as at 30th September 2003. The shortage was caused as a consequence of an overpayment from client bank account in the sum of £15,000 and £4,452.31 incorrectly lodged in office bank account.
7. There was partial rectification (£3,745.31) in October 2003.
8. The Respondent acted for a Mrs M in connection with a matrimonial matter in or about September 1997. A list of client account balances as at 31st May 2003 showed that Mrs M's account in the client's ledger was overdrawn by £15,000, and had been since 28th March 2002. A Consent Order had been prepared on 4th January 2001. Mr M was to pay Mrs M £33,000.00 by way of two instalments. The first instalment of £15,000 was to be paid in January 2001, with the second instalment of £18,000 to be paid in March 2002.
9. Mrs M's client ledger account did not record the receipt of the first instalment of £15,000, but the second instalment of £18,000 was credited to the ledger account on 27th March 2002. The following day, a client account cheque for £33,000 payable to Mrs M was drawn resulting in the debit balance of £15,000.
10. The Respondent did not rectify the breach promptly. Mr M's solicitors had confirmed to the IO that they had forwarded a cheque payable to Purcell Brown & Co for £15,000 on 31st January 2001. That cheque had been cleared. The Respondent's former accountant said he had brought this matter to the attention of the Respondent on at least two occasions.

Allegations (ii), (iii) and (x)

The matter of Mr D

11. The Respondent's firm acted for Mr D in respect of a criminal matter. An invoice dated 1st May 2003 from Sevda Musa's Turkish Interpreting and Translation Services in the sum of £3,745.31 was received by the firm. On 20th June 2003 the Lord Chancellor's Department paid the sum of £3,745.31 to the firm in respect of the interpreter's invoice. The money was paid into the Respondent's office bank account, at a time when the account was being operated in excess of the firm's agreed overdraft limit.
12. The office account cash book showed that a cheque for £3,745.31 payable to Sevda Musa had been raised on 23rd June 2003. Neither that cheque nor one issued cleared through the account. The payee confirmed that both cheques had been dishonoured, but she was eventually paid by two instalments.

The matter of Mr W

13. The Respondent's firm acted for Mr W in connection with a child care matter in about December 2001. The client's money was lodged in the office bank account in excess of the funds due to the firm. The Respondent raised two bills of costs and forwarded them to the client. The bills were dated 10th January 2002 (£1,581.50) and 8th May 2003 (£1,347.82). The client made a number of payments to the firm, two of which

were lodged directly in the office account. The excess paid into office account over and above that due to the firm was £707. There was no evidence on the client matter file to indicate that any of the disbursements incurred had been paid into office account. These payments were not split between the office and client bank accounts or placed in a client bank account as required by Rule 20(2) of the SAR. The Respondent had the benefit of and utilisation of the client's monies and/or unpaid disbursements.

Allegations (vi)

14. The Respondent failed to record dealings with office money relating to a client on the office side of the appropriate client ledger account in that in relation to the matter of Mr M, the Respondent had after a long delay made payment of Counsel's fees, but failed to post the payment to the office side of the client's ledger.

Allegation (viii)

15. The Respondent did not supply all of the files requested by the IO and did not respond adequately or at all to her queries. The Respondent had been requested to provide 21 files but produced only 14 files, 5 of which were incomplete. The Respondent did not respond adequately to either the IO's oral or written requests for information. He did not for instance provide straightforward information such as the number of staff at his firm.

Allegation (xi)

16. The Respondent was often absent from the office, although he was the only person qualified to supervise for the purposes of Practice Rule 13. On occasion he did not attend the office at all during normal working hours.

Allegation (xii)

17. The Respondent did not comply with the terms of the contract entered into with the Legal Services Commission (LSC) in respect of the payment of disbursements under which a firm has to discharge disbursements incurred with a third party within three months of submitting the claim to the LSC. Of five immigration matters reviewed by the IO, there were four where disbursements had been claimed but not paid in accordance with the terms of the contract.

Mr M

18. The Respondent acted for Mr M in a legally aided immigration matter. Interpreting fees were claimed but there was no evidence that this particular client required an interpreter. There was an absence of supporting documents in respect of a £250 disbursement claimed in November 2001 and in respect of counsel's fees claimed. Unsupported disbursements and counsel's fees totalled £770. Counsel's clerk confirmed that counsel's fees of £205.99 remained unpaid as at 31st October 2003.

Mrs K

19. The Respondent acted for Mrs K in a legally aided immigration matter. The firm claimed costs and disbursements in February 2003 of £1,975.69, which included counsel's fees of £911.25 and disbursements of £131.44. At the date of the IO's inspection the firm had not paid the disbursements of £131.44, in respect of interpreting fees, or counsel's fees. The counsel's fee clerk confirmed that as at 30th October 2003 the fees remained unpaid. The interpreters had also confirmed that their account remained unpaid.

Allegation (xiii)

20. On 17th October 2003 one final attempt was made to obtain an explanation from the Respondent about the £15,000 overdrawn in Mrs M's matter (paragraphs 8 to 10 above). The Respondent indicated that he could not locate the client matter file believing that he had left it at home. He said he would fax his explanation to The Law Society by 5pm on that date and provided an undertaking stating,

"I Purcell Brown hereby undertake to fax a written response to [the IO] by 5pm on 17th October 2003 on the file of Mrs M re. £15,000 debit on client account."

The Respondent did not comply with the undertaking.

21. By letter dated 26th January 2004 The Law Society wrote to the Respondent, enclosing a copy of the IO's Report and seeking his explanation in respect of the matters contained therein. The Respondent did not reply or provide explanation.

Allegation (xiv)

22. Between 4th February 2003 and 17th February 2003 the Respondent did not hold a Practising Certificate. He informed The Law Society that he was not present at the office. By an undated letter received by The Law Society on 2nd July 2003 the Respondent said,

"We write to confirm that during the relevant period my colleague, Ms D Cowan of D Brown Associates, Elco House, 22- 24 Holm Croft Road, Wood Green, London, N22 covered the office."

23. The Law Society subsequently ascertained that Ms D Cowan was also known as Miss Derildene Erika Elizabeth Brown who practised under her maiden name of Brown. The Law Society wrote to Miss Brown seeking clarification about her supervision of the office. In her letter of 30th September 2003 Miss D Brown indicated,

"My official start date at Purcell Brown & Company was 15th April 2003... My full name is Miss Derildene Erika Elizabeth Cowan (nee Brown). I was told by The Law Society that I am still able to use my maiden name."

The representations of the Respondent were inconsistent with the explanation of Miss Brown. By letters dated 20th October 2003, 5th November 2003 and 27th November

2003 The Law Society wrote to the Respondent seeking his explanation of the supervision arrangements at Purcell Brown & Co from 4th to 17th February 2003. The Respondent did not reply. The representation by the Respondent in his letter to The Law Society to the effect that Miss D Cowan covered the office during his absence was misleading and/ or inaccurate.

Allegation (xv)

24. Not only did the Respondent not reply to letters addressed to him by The Law Society dated 20th October 2003, 5th November 2003 and 27th November 2003 in relation to the supervision arrangements at his practice, but he failed to reply to correspondence from The Law Society in relation to the complaint of Dr S, such letters being dated 3rd December 2003 and 18th December 2003.
25. In relation to the complaint of Mr W, the Respondent did not reply to letters from The Law Society dated 3rd March 2004, 17th March 2004 and subsequently, following amendment to the address, letters dated 20th May 2004, 4th June 2004 and 23rd June 2004.
26. The Respondent did not reply to correspondence from The Law Society relating to his outstanding Accountant's Report for the year ending 31st May 2003, such letter being dated 9th July 2004.

Allegations (xvi) and (xvii)

27. By letter dated 23rd September 2003 Dr S wrote to The Law Society complaining about the conduct of the Respondent in failing to pay his professional fees. Dr S obtained a county court judgment in his favour dated 5th September 2003 in respect of the judgment debt of £7,990.05 together with £250.00 costs. The judgment debt had not been discharged.

Allegations (xviii) and (xix)

28. By letter dated 20th January 2004 Mr W wrote to The Law Society about the conduct of the Respondent who had failed to discharge his professional fees. Mr W obtained a county court judgment for the debt and costs totalling £935.31 such money to be paid by 19th December 2003. The judgment debt had not been discharged.

Allegation (xx)

29. The Respondent's Accountant's Report for the year ending 31st May 2003, due to be delivered on or before 30th November 2003 was outstanding. The Law Society had written to the Respondent about this on a number of occasions. The Respondent had not replied and had not filed the outstanding report.

The Submissions of the Applicant

30. The facts spoke for themselves. The Respondent had been in breach of a clear undertaking and that was an extremely serious matter. Compliance with a solicitor's undertaking was the bedrock on which solicitors conducted their business and any

breach serves seriously to interfere with the expectation of those accepting undertakings that there will be a full and prompt discharge of them.

31. Ms Cowan (otherwise known as Miss Brown), had appeared before the Tribunal in October 2005 when an order striking her off the Roll had been made following the substantiation of allegations that she had made misleading statements to The Law Society. There had, however, been no challenge to what she had said about the supervision of the Respondent's practice.
32. It was a matter for concern when a solicitor did not pay the professional fees of third parties and the seriousness of that was exacerbated where the parties had obtained a court order in respect of such fees and the judgment debt had not been satisfied.
33. The matters alleged against the Respondent demonstrated a number of serious breaches covering a wide range of professional conduct. In the submission of the Applicant this demonstrated that the Respondent's overall approach was one of general non-compliance with his obligations as a solicitor.
34. The Tribunal was invited to take the view that this case fell at the serious end of the scale.
35. Save for the allegation that the Respondent had misled The Law Society in a letter, dishonesty was not alleged against the Respondent. The Tribunal would however bear in mind the case of Bolton -v- The Law Society and was invited to find that the Respondent had fallen very far below the required standards of probity, integrity and trustworthiness required from members of the solicitors' profession.

The Submissions of the Respondent

36. The Respondent played no part in the proceedings but an email letter had been received in the Tribunal's office on the date of the hearing from a Mr Ian Craine. It was unclear to the Tribunal whether Mr Craine had written with the approval or knowledge of the Respondent but noted the comments made in support of the Respondent. He said he did not know the precise nature of the allegations. He had assisted Mr Brown as a Lexcel consultant and with Legal Aid franchise applications. He had also provided management consultancy services to the Respondent on an ad hoc basis. Mr Craine said he was aware of the Respondent's eventual financial difficulties but it was his opinion that the Respondent was not a dishonest man. There had been a knock-on effect when the LSC had lent considerable sums of money to solicitors to enable them to meet an increased demand for immigration practitioners. He believed that a firm like that of the Respondent's subsequently fell into debt with a number of different creditors and had become caught between the very different requirements of The Law Society, the LSC and their bankers. Mr Craine had found the Respondent to be an honourable man doing his best in extremely difficult circumstances.

The Tribunal's Findings

37. The Tribunal found all of the allegations against the Respondent to have been substantiated. The Tribunal did find that the Respondent had made representations to The Law Society (in his letter received by The Law Society on 2nd July 2003) that he knew or ought to have known were misleading and/ or inaccurate. The Tribunal was not satisfied that the Respondent had been dishonest when he wrote the letter which was the subject of allegation xiv.

Previous Findings of the Tribunal

38. At a hearing on 23rd October 2003 the Tribunal found substantiated against the Respondent an allegation that he had been guilty of conduct unbecoming a solicitor in that he had failed and/ or delayed in replying to correspondence addressed to him by the Office of the Supervision of Solicitors (The Law Society). In its findings dated 25th November 2003 the Tribunal said that,

“The Tribunal found the allegation to have been substantiated. The Respondent appeared completely to have ignored letters addressed to him by the OSS. It is a serious matter if a solicitor does not reply to correspondence addressed to him by his own professional body. Letters sent to him had asked for information and that information had not been forthcoming. The Respondent had on an earlier occasion sought an adjournment owing to a bereavement and that had been granted to him on compassionate grounds. On the date fixed for the hearing the Respondent did not appear and was not represented and appeared to regard the Tribunal with the same disdain with which he regards the OSS. Such behaviour on the part of a solicitor is not acceptable. It prevents The Law Society from carrying out its duties as regulator and increases the cost of regulation to all other members of the profession. The Tribunal imposed a fine of £2,500 upon the Respondent and ordered him to pay the Applicant's costs in a fixed sum.”

The Tribunal's Decision and its Reasons

39. The Tribunal has found a large number of allegations to have been substantiated against the Respondent and they relate to a wide range of professional misconduct. Of course, a solicitor is required to be punctillious in his compliance with the Solicitors Accounts Rules and any failure to comply is a matter to be regarded with seriousness. The non payment of third party fees even in the face of a court order is also a serious and ill serves the good reputation of the solicitors' profession. What appears to have been a somewhat lackadaisical approach in accounting matters and the failure to exercise a proper stewardship over clients' funds also werer matters for deep concern.
40. The Tribunal noted that the Respondent was thought no longer to be in the country and he had played no part in the proceedings. The Tribunal had also taken into account the fact that one of the Respondent's advisers had taken the trouble to contact the Tribunal and explain that the Respondent had faced considerable difficulties but was an honourable man.

41. The Tribunal has taken all of these factors into account, and also the fact that the Respondent had been subject to a financial penalty imposed by the Tribunal on an earlier occasion and has concluded that whilst it makes no finding of dishonesty, the Respondent has not met the high standards of integrity, probity and trustworthiness required of a member of the solicitors' profession. In such circumstances it was both just and proportionate in order to protect the public and the good reputation of the solicitors' profession that the Respondent be struck off the Roll of solicitors.
42. The Applicant sought the costs of and incidental to the application and enquiry. These were set at a high figure. The legal costs including disbursements which themselves were substantial because of the need to comply with the Tribunal's order for substituted service by way of advertisement, and including VAT came to the figure of £11,110.45. The costs of The Law Society's investigation officer amounted to £13,107.43. The total costs sought by the Applicant were therefore £24,217.88. Whilst the Tribunal had no reason to suppose that the costs claimed were anything other than reasonable, it was concerned that the Respondent had made no representations in this respect. However, in view of the fact that the Respondent had taken no part in the proceedings, was thought to be abroad and his payment of the costs was not anticipated the Tribunal considered it right in order to obviate the need for The Law Society to expend further time and cost in seeking a detailed assessment the Tribunal considered that it would be appropriate and proportionate to order the Respondent to pay the costs in the fixed sum sought by the Applicant.

Dated this 20th day of December 2005
On behalf of the Tribunal

R J C Potter
Chairman