

IN THE MATTER OF JUSTIN JOHNSON, 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 Margaret Eleanor Bromley, solicitor of TLT, 1 Redcliff Street, Bristol BS1 6TP on 25th April 2005 that Justin Johnson of Hagley, Stourbridge, 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:-

- 1) He failed to comply with the Solicitors Accounts Rules 1998 in that he withdrew money from client account in respect of costs without first giving the client written notification of the costs in breach of Rule 19(2);
- 2) He had been guilty of conduct unbecoming a solicitor in that:-
 - (i) He raised bills of costs that he knew or ought to have known he could not justify;
 - (ii) He failed to comply with the Solicitor Costs Information and Client Care Code in breach of Practice Rule 15.

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

The evidence before the Tribunal included the Report of the Law Society's Forensic Investigation Unit.

The Respondent had filed a statement in response of 5th August 2005, a final statement dated 26th October 2005 and had faxed to the Tribunal on 7th November 2005 a letter to which a written reference was attached. In the Respondent's documents he confirmed that in the main the allegations and the facts supporting them were admitted by him.

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

The Tribunal Orders that the Respondent, Justin Johnson of Hagley, Stourbridge, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 8th day of November 2005 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,933.

The facts are set out in paragraphs 1 to 25 hereunder:-

1. The Respondent, born in 1956, was admitted as a solicitor in 1981.
2. In September 2001 the Respondent was employed by Blakemores Solicitors of Birmingham as a locum solicitor.
3. On 17th July 2003 an officer of the Law Society's Forensic Investigation Unit (the FIO) commenced a investigation at Blakemore's offices. An extract of the FIO's Report dated 31st March 2004 was before the Tribunal. The following matters were revealed thereby.

Breaches of the Solicitors Accounts Rules

4. Blakemores (the firm) acted in the matter of Mrs SJ deceased. The executors were two partners of the firm. The Respondent had conduct of the matter after December 2001.
5. Between 9th May 2002 and 12th May 2003 eight invoices were raised. On every occasion that a bill was raised, costs were transferred from client to office account.
6. Of the eight bills raised five were cancelled by the raising of a credit note and the relevant costs transferred from office account back to client account. The total fees billed were £20,423.26, of which £14,932.83 were cancelled - some 73% of the original sum charged.
7. When interviewed by the FIO the Respondent said that the bills had been sent to the clients but he did not know whether the credit notes had been sent to the clients.

8. In the course of an audit of the Respondent's files carried out by a partner in the firm no copy invoices or letters sending invoices to the client were found on Mr S's file.
9. The firm acted in the matter of Mr WAB deceased and the Respondent had conduct of the matter from December 2001. Nine invoices were raised totalling £13,073.39. In respect of each invoice, costs were transferred from client account to office account. All nine invoices were subsequently cancelled by the issue of credit notes.
10. When interviewed by the FIO the Respondent initially said that the invoices had been sent to the client. Subsequently the Respondent accepted that the bills had not been sent to the clients at the relevant times. The Respondent told the FIO that he accepted that the contents of the file did not justify the level of billing and added that the notes on the file "were woefully inadequate to justify the bills".
11. The firm also acted in the matter of Ms CMP deceased. The Respondent had conduct of the matter from September 2001. Three invoices were raised totalling £5,593.30. In respect of each invoice, costs were transferred from client account to office account. All three invoices were subsequently cancelled by the issue of a credit note.
12. In interview with the FIO the Respondent said that he did not know if the bills had been sent to the clients. He went on to say that he would not take beneficiaries' money as costs. He did not know if he had undertaken enough work to justify the bills.
13. In an interview with the FIO the Respondent agreed that the file showed no evidence of any material work having been carried out since October 2001 except the payment of £587.52 to one of the beneficiaries.
14. The will provided for eight gifts of £500 each to children. Only two of the children had received their gifts. Therefore £3,000 plus interest should have remained in client account. In August 2003 a partner in the firm raised credit notes cancelling all of the bills.
15. A similar situation arose in respect of the matter of Mr DEA deceased and in the matter of Mr LBC.
16. The FIO noted that the DEA deceased file did not contain any evidence that bills and credit notes had been delivered to the clients. In interview the Respondent told the FIO that the bills had been sent to the clients.

Raised bills of costs which he knew or ought to have known could not be justified

17. The FIO's Report summarised 25 client files of which the Respondent had conduct. A total of £318,963.54 had been billed as costs and of these, £165,598.33 was cancelled by the issue of credit notes - approximately 25% of the value of the bills raised.
18. The partner in the firm who carried out the audit of the Respondent's files found evidence of block time recording by the Respondent. On four days between 27th June

and 12th August, a total of 111.8 hours was recorded including 72 hours on 12th August.

19. The Respondent admitted that he did not contemporaneously time record and added that the units were either in error or an accumulation of previous work done on the file. He maintained that his files would justify the bills. In discussions with the FIO the Respondent said that it was fair to say that he had overcharged the client but could not say what the correct level of billing ought to have been.

Failure to comply with Solicitors' Costs Information and Client Care Code

20. In respect of each of the five matters reviewed in the FIO's Report, the FIO noted that the file did not contain a client care/costs letter issued by the Respondent so that the clients were not informed that the Respondent was the fee earner dealing with the matter, of any change in the hourly rate, nor of the continuing position in relation to costs.
21. When the question of client care letters was raised with the Respondent the Respondent replied by memo dated 16th July 2003 as a partner of the firm, in which he accepted that there was not a client care letter on two files.

Correspondence with the Law Society

22. On 19th July 2004 the firm sent their response to the FIO's Report to the Law Society.
23. On 15th June 2004 the Respondent was sent a copy of the FIO's Report and asked for his comments. On 20th July Sugaré & Co replied on his behalf. In respect of the raising of credit notes it was said:-

“The reason for credit notes being initiated was because our client, on closer review of the file, realised that the amounts claimed on interim bills was too high and this, therefore, was a correction process.”

24. In respect of the failure to comply with the Solicitors' Costs Information and Client Care Code they said:-

“Our client felt that he had given, in the main, adequate costs information to clients. If there were occasions when the file did not display that then this was an oversight on our client's part largely due to pressure of work.”

25. In respect of the allegation of over billing they said on behalf of their client that this was not done to boost his figures or in order to boost his bonuses. They went on to say:-

“He does accept that he was artificially creating a position where it would appear that he was earning more for the firm than the respective files justified, but that this was not done to affect a bonus to him but to enhance his work in the eyes of the firm's partners.”

The Submissions of the Applicant

26. The Respondent had been guilty at the very least of chaotic file management. In the submission of the Applicant the matter went further than that as the Respondent had claimed that he had worked for hours that were impossible to achieve and he had not carried out proper time recording. The Respondent accepted that he had overbilled clients and had done so to enhance his standing with the partners in the firm rather than obtain a financial benefit by way of bonus for himself.
27. The way in which the Respondent conducted himself fell very far short of the high standards of integrity, probity and trustworthiness required of a member of the solicitors' profession. Such behaviour would damage the good reputation of the solicitors' profession in the eyes of the public.

The Submissions of the Respondent (the aforementioned documents provided by the Respondent are hereunder summarised)

28. When the Respondent first joined the firm of Blakemores a number of staff were dismissed. The Respondent agreed to take over the probate work and the commercial work. A solicitor recruited to assist was dismissed a fortnight after she commenced her employment. The Respondent was required to be out of the office to generate work at a time when he had conduct of a large number of client matters. He believed that the volume of work that he was expected to shoulder was too great and at the time his health was fragile. He had been suffering for some years with acute depression which led to periods when he found it very difficult to function. Since leaving Blakemores the Respondent had a breakdown and had been admitted as an in-patient at Kidderminster Hospital.
29. The breaches and errors outlined by the Applicant were regretted deeply by the Respondent. The Respondent believed the extreme pressure to which he had been subjected had affected his judgement.
30. Billing within the firm was somewhat haphazard. The Respondent had entrusted too much responsibility to a secretary.
31. The Respondent accepted that his time recording had been poor as he preferred to spend his time on professional work for clients. As a result he often used to block time record. The Respondent had been under pressure from the partners to bill work.
32. The Respondent believed that continuing to undertake locum work which he enjoyed would be within his capabilities. He had never been the subject of any claim for professional negligence and he had learned a very hard lesson from his experiences at Blakemores.
33. The Respondent had thoroughly read the Solicitors Accounts Rules and the Law Society had made it a condition of any future Practising Certificate that he attend a client care course.

34. The Respondent would not have placed his professional career or standing in jeopardy for the sake of a bonus which was no more than £3,000. Out of decency he shared that sum with his secretary and which he had refunded in any event.
35. The Respondent had been engaged on pro bono work at the Citizens Advice Bureau and had acted for people who could not afford a solicitor.
36. He had been a mentor for a scheme sponsored by the Equal Opportunities and Race Relations Commissions, an examiner in accounts for the Law Society, a lecturer to the Institute of Import and Export and as an examiner and also clerk to the governors of a number of inner city schools, as a lecturer on the legal practice course at Central England University and as a lecturer on the Institute of Legal Executives course. Much of that work was unpaid.
37. The Respondent and his family were living in rented accommodation and his only income was that derived from short locum assignments and benefits.
38. The Respondent had not only suffered health difficulties but also matrimonial difficulties.
39. The Respondent had not been dishonest and dishonesty was not alleged against him. In view of his previous unblemished record the Respondent hoped that the Tribunal would consider that the matters found against him would merit no more than a reprimand. He trusted that the Tribunal would deal with such matter in the absence of the Respondent.
40. The Respondent apologised without reserve that the matter had come before the Tribunal and he would not permit such carelessness to occur in the future. The Tribunal was invited to give due weight to the written testimonial from a client who had known the Respondent for 11 years. She said that he was hard working, honest and always reliable. He was a kind man who would always put himself out to help other people. She had always found the Respondent to be knowledgeable, professional and successful in solving problematic situations. She had no hesitation in recommending the Respondent to any business associates or personal friends.
41. The Respondent hoped he might go forward and represent the solicitors' profession with the dignity and honour it deserves.

The Tribunal's Findings

42. The Tribunal found all of the allegations to have been substantiated.
43. The Tribunal paid close attention to the case put by the Applicant and had read the Respondent's letters, his statements and had also given due weight to these and a written testimonial in support of the Respondent.
44. The Tribunal did not agree with the Respondent that the conduct underlying the allegations found to be substantiated against him was at such a low level that the imposition of a reprimand would be an appropriate sanction.

45. The subject matter of the allegations was extremely serious. On the face of it the Respondent had substantially overcharged on a number of matters over a protracted period of time. Payments had been made from client to office account. It was the Respondent's own case that he had not undertaken the overbilling with a view to personal gain because the amount billed was reflected in his bonus arrangements, but rather he had artificially created a position where he appeared to the firm employing him that he had been undertaking more work and work of a greater value than the files would justify.
46. Although no formal medical evidence was before the Tribunal the Respondent had made reference to certain health issues in the papers which he had filed. In the light of these references the Tribunal was concerned about the Respondent's fitness to practise. The Tribunal had in such circumstances to give particular attention to its first duty to protect the public.
47. It was further the case that substantial overbilling on the part of a solicitor can only damage the good reputation of the solicitors' profession.
48. In all of the particular circumstances of this case the Tribunal concluded that the appropriate and proportionate order to be made in respect of the Respondent was that he be suspended from practice for an indefinite period of time. The Applicant had sought the costs of and incidental to the application and enquiry in the sum of £7,933 (which included a proportion of the FIO's costs). The Tribunal noted the Respondent's references to his financial position but nevertheless considered it right that the Respondent should pay the Applicant's costs. Having regard to the complexity of the case and the fact that the costs sought included a proportion of the FIO's costs the Tribunal considered that figure to be entirely reasonable and in order to save time and further cost ruled that the Respondent pay the Applicant's costs fixed in the sum requested by the Applicant.

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

R J C Potter
Chairman