

IN THE MATTER OF MILTON FIRMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr R J C Potter
Mr G Fisher

Date of Hearing: 2nd February 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe and Coleman of 70 Marylebone Lane, London W1U 2PQ on 24th June 2005 that Milton Firman of Jacob House, 140 Ashley Road, Hale, Cheshire, WA14 2UN solicitor 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 unbefitting a solicitor in each of the following particulars namely:-

- (a) That by paying his client £16,750.00 of his own money on the pretext that it was money received by him from or on behalf of the defendants in his client's claim for damages he dishonestly misled or attempted to mislead his client into believing that he had settled her claim for damages against Van Den Burgh foods.
- (b) That he failed to act in his client's best interests and compromised the good repute of the solicitors' profession by failing to act on instructions in respect of his client's claim against Trafford General Hospital.

- (c) That he failed to act in his client's best interests and compromised the good repute of the solicitors' profession by failing to inform his client that her claims against Van Den Burgh foods and Trafford General Hospital had become statute barred.
- (d) That he failed to act in his client's best interests and compromised the good repute of the solicitors' profession by failing to inform his client that because her claims had become statute barred she should seek independent legal advice and/or that she could report the matter to his insurers.
- (e) That he dishonestly and improperly used his client account to conceal that a payment made in respect of damages was in fact his own money in breach of Rule 15 of the Solicitors' Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 2nd February 2006 when Robert Simon Roscoe appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent. During the hearing the Respondent handed to the Tribunal a letter of reference in his support.

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

The Tribunal Orders that the Respondent, Milton Firman of Jacob House, 140 Ashley Road, Hale, Cheshire, WA14 2UN, 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 £2,300.00.

The facts are set out in paragraphs 1 to 9 hereunder:-

1. The Respondent, born in 1953, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At the material time the Respondent was a sole practitioner in practice as Milton Firman Solicitors of Jacob House, 140 Ashley Road, Hale, Cheshire WA14 2UN.
3. On 14th October 1997, Mrs A-M B ("the client") suffered an injury at work. She initially instructed a Mr P to act in her claim for personal injury damages. Mr P was at that stage with a different firm of solicitors. He subsequently moved to a second firm before joining the Respondent's firm as an assistant solicitor. On 23rd November 2000 the client received a letter from the Respondent's firm informing her that her matter had been transferred to them and that Mr P continued to act for her.
4. The client had difficulty in ascertaining the progress of her claim. In May 2001 she and her husband met the Respondent at his office. He told the client that he would handle her claim. By that stage the matter was statute barred. The Respondent did not tell his client this.
5. During 2002 and 2003 the client wrote to the Respondent regarding the progress of her claim. On 24th November 2003 the Respondent wrote to his client informing her

that her claim had been settled and enclosing a cheque in the sum of £16,750.00 payable to the client and drawn on the Respondent's client account.

6. The client contacted the defendant's insurers and was told that no liability had been accepted, no settlement had occurred and that her claim had, in any event, been closed eighteen months before.
7. On 3rd February 2004 the client reported the matter to the Law Society. The Respondent wrote to the Law Society on 3rd May 2004. In summary, he accepted that his conduct was as set out in paragraphs 3 to 6 above. He disclosed a copy of an advice from counsel dated 10th July 2000 providing an opinion on the quantum of damages and indicating a figure of £15,000.00. The Respondent wrote again to the Law Society on 3rd August 2004.
8. Following the decision of the Adjudicator on 13th December 2004 to refer his conduct to the Tribunal, the Respondent wrote again to the Law Society on 20th January 2005. He confirmed that the settlement payment made to the client came from his own savings and reiterated the basis upon which he had made such payment.
9. The Respondent sought a review of the Adjudicator's decision and on 11th May 2005 the Adjudication Panel resolved that the matter should be referred to the Tribunal.

The Submissions of the Applicant

10. The Respondent had admitted the allegations.
11. The Tribunal was referred to the letters from the Respondent's client Mrs B. In her letter of 3rd February 2004 to the Law Society Mrs B summarised the issues which concerned her. Even at that late date she was still not sure which of the potential defendants had paid her damages. In fact the Respondent had paid money into client account from his own funds.
12. It was right to say that the Respondent had made full and frank admissions from the outset and had cooperated with the Applicant. He had also disclosed the opinion regarding the quantum of damages prepared by Counsel.
13. The Tribunal was referred however to the decision of the Adjudication Panel dated 11th May 2005, when the Panel expressed concern that the deception of the client had continued over a substantial and significant period.
14. The Tribunal was referred to a further letter from Mrs B dated 24th January 2005.
15. The Applicant had made it clear that he was alleging dishonesty. The Respondent's client had been misled. In the submissions of the Applicant the Respondent's dishonesty was substantiated within the guidelines of the Tribunal.
16. The Respondent had agreed the Applicant's costs in the sum £2,300.00.

The Submissions of the Respondent

17. The Respondent did not seek to minimise what had occurred. In the course of the matters before the Tribunal he had 'landed on his face' but had sought to pick himself up as would be demonstrated by the actions he had taken. He had chosen to represent himself so that his apology would come directly from himself. He was truly sorry and apologised to his client, the profession and his family.
18. The Tribunal was asked to consider the Respondent's motive in what he had done. Cases of dishonesty before the Tribunal usually involved a solicitor seeking a financial advantage for himself but that was not what had occurred. The Respondent had taken a decision which had been wrong; namely not to report the matter to his insurers. He had then set about ensuring that he had the money ready to meet the client's claim.
19. In his correspondence with the Law Society he had suggested his motive. Even with the benefit of hindsight he had not at any time intended to cause any disadvantage to his client. The Respondent believed it was pride that had led him not to claim on his insurance policy. The subsequent delay was in order to ensure that he had payment ready. The Respondent believed that he had met his client's expectations.
20. The Respondent accepted that he had been less than candid with his client and apologised. He had paid her damages out of his Building Society account.
21. The Respondent did not consider that his misconduct had been over a protracted period. He had taken a silly decision and the rest of the events had flowed from that. The Respondent had dealt with thousands of claims in a proper way.
22. The Respondent had seen his professional life as a vocation. He had been involved in the profession locally and he had also been involved in the National Independent Solicitors' Group.
23. The Respondent had not been cavalier about the matters before the Tribunal and regretted the decision he had taken. He had paid a financial penalty in that he had paid a substantial amount of money to his client out of his own funds.
24. The matter went back in excess of two years. At an earlier stage there had been a recommendation that he receive a reprimand and not be referred to the Tribunal but the matter had then been revitalised. The strain had not been insubstantial. The financial loss which he had suffered and the length of time which had elapsed between the incident which caused him to appear before the Tribunal and the hearing had been a punishment to him although he made no complaint in that respect.
25. The Tribunal was asked to take account of the Respondent's family circumstances details of which were given to the Tribunal.
26. The Respondent accepted that at his level of experience he should not have made such a mistake.

27. The Respondent had no debts other than a mortgage and no criminal convictions nor judgements against him. He had not sought medical help believing that he had the strength and conviction to overcome what had occurred given the opportunity.
28. The Respondent would be known throughout Manchester law circles as someone who worked very long hours. In the Respondent's submission this was related to his poor judgement. Given more normal circumstances and shorter working hours he would not have done what he had. He had been insured and had had no previous claims. While he had attributed his actions to pride he considered that the level of work at the time had been a major factor.
29. There were two issues which had to be addressed:-
 - (i) How would the public be protected in the future.
 - (ii) What should the Respondent do in response to what had occurred to ensure that it would not happen again.
30. With regard to the protection of the public overwork was a major issue when a sole practitioner had a new practice. The Respondent had not been handling the pressure as well as he thought he could. He had subsequently been approached by a Liverpool firm engaged in criminal work. The Respondent had handled the largest money laundering case in the country. He had concluded that he must wind down his own practice and specialise in one area and this had occurred as a gradual process over the last two to three years. From September 2004 he had agreed that he would work solely as a consultant with the Liverpool firm doing only criminal work. The Respondent found the pressures of criminal work entirely different from those of general litigation and running his own practice. He now recognised that he should not have been in practice on his own.
31. The Respondent submitted a reference from the Liverpool firm which he had not prompted. They were happy for him to continue working with them. He had a direct line to the senior partner of the firm if there were any problems and he had received no complaints regarding criminal work, save for one of a delay in a matter which was being taxed. The Respondent intended in future only to do criminal work and never to have his own practice. He had divested himself of his practice at nil value.
32. From the client's point of view the Respondent considered that reiterating apologies would not advance matters. He had ensured that the client was paid. He had subsequently taken real steps as a result of what had happened so that clients would be protected in the future.
33. In summary the Respondent was entirely contrite. He accepted that he ought not to practise alone. He had not been cavalier in attitude. He had taken a decision he regretted but would never repeat this. He had closed his practice and would do only criminal work. He had made a mistake in personal injury work and had lost confidence. The public were secure. A solicitor who had made a mistake could be forgiven.
34. The Respondent would apologise to his client after the proceedings. The Respondent would never consciously hurt anyone. The Respondent believed that he had

responded as he should do in a positive and pragmatic way and the public could be happy with his present work.

35. Criminal work suited the Respondent's personality. He was compassionate and believed in the liberty of innocent people. He wanted to do the best he could in this area of work for many years.
36. The Respondent was pleading for an opportunity to continue with his work. There were no future concerns. No one could punish the Respondent more than he had himself. In addition he had suffered a financial loss and had been punished by attending the hearing.
37. The Respondent had a previous appearance before the Tribunal in 1986 again at a time when he had been a sole practitioner. There had been no allegations of dishonesty at that time. He had given an undertaking in a conveyancing transaction based on information from his client which he then could not meet. His books of account had been found wanting an inspection. The Tribunal had ordered that he be suspended for three years but the Respondent's appeal had been allowed a month later.

Previous appearance of the Respondent

38. At a hearing on 22nd May 1986 the following allegations were substantiated against the Respondent and another:-
 - (1) The Respondents failed to comply with the Solicitors Accounts Rules 1975 in that they:-
 - (a) Notwithstanding the provisions of Rule 11 of the said Rules failed to keep properly written up such books and accounts as are so required by such Rule;
 - (b) Notwithstanding the provisions of Rule 8 of the said Rules, drew out the client account money other than that permitted by Rule 7 of the said Rules;
 - (2) The Respondents had been guilty of conduct unbefitting a solicitor in that they:-
 - (a) Utilised money held and received by them on behalf of certain clients for the purposes of other clients;
 - (b) Occasioned a breach of Rule 1 of the Solicitors Practice Rules 1936-1972 in that they caused an advertisement to be published which was in contravention of condition (4) of the Council Statement as published in the Law Society's Gazette of 1st August 1984;
 - (3) [Allegation against another]
 - (4) [Allegation against the Respondent alone]

The First Respondent had:-

- (a) Failed to comply with the provisions of Section 34 of the Solicitors Act 1974 in that the accounting period specified in the Accountant's Reports delivered by him on 11th July 1985 and 16th December 1985 terminated more than six months before the date of its delivery;
 - (b) Had been guilty of conduct unbefitting a solicitor in that he failed within a reasonable time to comply with his undertakings and had failed to comply with one of them.
39. The Tribunal on that occasion took a particularly serious view of the Respondent's accounting failures and of his failure to comply with an undertaking given to another solicitor. The Tribunal ordered that the Respondent be suspended from practise as a solicitor for a period of three years and that he pay costs. (The period of suspension was reduced on appeal see paragraph 37 above.)
40. The Tribunal on 22nd February 2006 noted the Respondent's previous appearance but noted also that this had been twenty years earlier and involved very different allegations.

The Findings of the Tribunal

41. The Tribunal found the allegations to have been substantiated noting that the Respondent had admitted the allegations including the allegation of dishonesty.
42. The Tribunal considered that this was a sad case. The Respondent had made a mistake as others did in the course of legal practice. Instead of owning up to the error the Respondent had commenced upon a considered course making his representations to his client over a long period. The Respondent had met with the client in May 2001 but had not told her that her claim was already statute barred. The Tribunal noted the comments of the Adjudication Panel that:-
- “It was not until November 2003, three years after her claim had been struck out and after much chasing by Mrs B, that Mr Firman had sent her a cheque, purportedly in settlement of the claim.”
43. The Respondent had said in his letter of 20th January 2005 to the Law Society that his actions were entirely out of character but given the lengthy period during which the Respondent had maintained the deception of the client the Tribunal could not regard this matter as a one-off error of judgement. While the Respondent had not sought personal financial advantage he had not until investigated by the Law Society admitted what he had done or attempted to put matters right by referring his client to an independent solicitor.
44. The Tribunal took careful note of the comments of Mrs B in her letters. Her letter of 3rd February 2004 to the Law Society spoke of the efforts she had made to obtain information from the Respondent and it was clear that she was distressed and confused by the information she received from the defendant's insurers that the matter had been closed eighteen months earlier. In her letter of 24th January 2005 she rightly said that she should have been the one to decide if she was to go to another

independent solicitor not the Respondent. She spoke of her distress. She considered that the Respondent regarded her as gullible. She wrote:

“I on the other hand believe that if I cannot trust a man in such high prestige then who can I trust? I will find it hard to put my faith into the Law again if he is allowed to continue to deceive clients in this way.”

45. The Tribunal had taken careful note of the points made by the Respondent in mitigation and in particular his intention to work only in criminal law and not to practise alone in the future. The Tribunal was mindful however, of the words of the then Master of the Rolls in the case of Bolton -v- The Law Society speaking of the purpose behind the orders of the Tribunal:-

“The second purpose is the most fundamental of all: to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.... It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be a little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again.... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.”

46. It was the Tribunal’s duty to uphold the reputation of the profession. Only in cases of the most exceptional mitigation would a Respondent against whom an allegation of dishonesty had been substantiated be allowed to continue to practise as a solicitor. The Respondent’s mitigation did not show exceptional circumstances. Many solicitors including many sole practitioners worked under pressure and worked long hours. That did not lessen the seriousness of the prolonged deception of a client. It was right that the Respondent no longer be permitted to practise as a solicitor and that he pay the Applicants agreed costs.

47. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Milton Firman of Jacob House, 140 Ashley Road, Hale, Cheshire, WA14 2UN, 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 £2,300.00.

Dated this 28th day of March 2006

On behalf of the Tribunal

Mr A G Gibson
Chairman