

IN THE MATTER OF NARESH TRIVEDI, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)

Mr A G Gibson

Mr M G Taylor CBE

Date of Hearing: 15th December 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 18th July 2005 that Naresh Trivedi of Frank Forney & Partner (inc A G Shah), 455 High Street, London N22 8JD, 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 unbecoming a solicitor in each of the following particulars, namely:-

- (i) That he acted in a way which was fraudulent, deceitful or otherwise contrary to his position as a solicitor in that he represented and/or led his client (Mr MM) to believe that proceedings had been commenced and/or an offer of settlement of his medical negligence claim had been made, when in truth no proceedings had been commenced and/or no offer had been made, contrary to Principle 17.01 of the Guide to the Professional Conduct of Solicitors and/or Rule 1 of the Solicitors Practice Rules 1990 (for the avoidance of doubt this is an allegation of dishonesty);

- (ii) That he acted and/or continued to act where his own interest conflicted with those of his client;
- (iii) That he failed to advise his client to seek independent advice;
- (iv) The conduct of the Respondent overall is such that it gave rise to breaches to Rule 1(a), (c), (d) and (e) of the Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 15th December 2005 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent was represented by Peter Briegel of Counsel instructed by Frank Forney & Partners LLP Solicitors of Wood Green, London.

The evidence before the Tribunal included a letter addressed to the Applicant by Frank Forney & Partners LLP dated 8th December 2005 indicating that the Respondent admitted all of the allegations such admissions were confirmed at the hearing. A bundle of documents was handed up in support of the Respondent's mitigation.

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

The Tribunal Orders that the Respondent Naresh Trivedi of Frank Forney & Partners (Inc A G Shah), 455 High Street, London, N22 8JD, 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 £9,000.00.

The facts are set out in paragraphs 1 to 14 hereunder:-

1. The Respondent, 50 years of age, was admitted as a solicitor in 1984. At the material times the Respondent was a partner in Frank Forney & Partners (inc A G Shah). At the date of the hearing he continued to practise as a solicitor with that firm, but as an assistant solicitor. The Respondent had not renewed his Practising Certificate.
2. By letter dated 17th August 2001 Messrs Leigh Day & Co solicitors made complaint to the (then) Office for the Supervision of Solicitors (hereinafter referred to as The Law Society) on behalf of their client, Mr MM, concerning the conduct of the Respondent who had been instructed by Mr MM in respect of a medical negligence claim.
3. Mr MM had surgery to his leg in about 1987. The operation was not successful. Mr MM instructed the Respondent's firm in about November 1993. A "Peer Review" had been undertaken by Mr G B Purves of Counsel, instructed by Frank Forney & Partners. The Peer Review dated 15th July 2002 was before the Tribunal.
4. The damage to Mr MM occasioned by the operation was not realised until about June 1992. The limitation period expired on 16th June 1995.
5. After he received instructions from Mr MM, the Respondent made an application for Legal Aid accompanied by letter dated 18th August 1994. This was some nine months from the date the Respondent was instructed. The explanation offered in the Peer

Review was that the Respondent overlooked the file or lost or mislaid the file between July 1994 and the amalgamation of his former sole practice with his new firm in January 1995.

6. Mr MM's recollection was that he heard nothing from the Respondent's firm between the date of his instructions and 1999. He made contact with the firm to ascertain the position.
7. In or about 1999 the matter was resurrected, by which time the limitation period had expired in June 1995, some four years earlier. The Respondent could not locate the file. It was suggested within the Peer Review that the Respondent did not inform Mr MM that the file had been lost "because he did not know this to be the case". The Respondent did not advise Mr MM about the expiry of the limitation date or the loss of the file.
8. The Respondent referred Mr MM to Dr S in or about 1999 and he subsequently saw a neurosurgeon Mr A.
9. Mr MM recalled, just before Christmas 2000, receiving a telephone call from the Respondent saying an offer had been made in the sum of £3,000 which was subsequently increased to £5,000 and then to £7,500. The Respondent's recollection was set out in the Peer Review as follows:-

"In an effort to appease Mr MM he said he would pay him £3,000 in compensation for losing the file"

When Mr MM rejected this the Respondent said he would be prepared to give £5,000 and then £7,500 to settle the matter in the light of the fact that there were no medical reports.

10. By letter dated 14th December 2000 the Respondent wrote to Mr MM in the following terms:-

"Dear Mr MM,

YOUR CLAIM

I refer to the above matter and write to confirm that the sum of £7,500 is offered to you in full and final satisfaction of your claim.

Perhaps you can telephone me to discuss the matter."

11. The letter was accompanied by a settlement statement which read:-

"I MM of [address] hereby accept the sum of £7,500 in full and final settlement of all claims arising from my claim for damages for negligence against the North Middlesex Hospital Trust"

12. This document was signed by the client on 3rd January 2001.
13. Thereafter, there were three meetings attended by the client and various family members and the Respondent in February, April and May 2001.
14. Solicitors had been instructed to act on behalf of the Respondent's indemnity insurer.

The submissions of the Applicant

15. Despite the initial uncertainty as to the date when the Respondent was instructed by Mr MM, it had become common ground that Mr MM instructed the Respondent in respect of a medical negligence claim in about 1993. In due course, Mr MM sought further advice from Messrs Leigh Day & Co, a firm specialising in clinical negligence claims, who discovered that the medical negligence action had not been issued within the limitation period, nor had the Respondent taken adequate action to obtain medical evidence on his client's behalf and he had delayed unreasonably in applying for Legal Aid.
16. The Respondent conceded that the file had been lost. The Respondent first informed his client of that fact not earlier than February 2001 when the first meeting at Dr S's office took place and after he represented that an offer had been made in settlement of the medical negligence claim.

Allegation (i)

17. The Respondent led his client to believe, whether expressly or by implication, that proceedings had been commenced and/or an offer in settlement had been made in respect of his medical negligence claim, when both were untrue.
18. The letter from the Respondent dated 14th December 2000 when read in conjunction with the acceptance sheet attached to it, gave the quite clear impression that the offer of £7,500 related to the clinical negligence claim. There was only one reasonable interpretation as to the words used in that document, that was to say that the offer was made in conjunction with and in settlement of, a claim arising in negligence against the North Middlesex Hospital Trust.
19. The Peer Review prepared by Mr Purves suggested that a different interpretation could be placed upon the document, namely:-

“On its face it would suggest that the payment was made in full and final settlement of all claims arising out of his claim to damages for negligence... although it did not state that it was in full and final settlement of all claims against Mr Trivedi or his firm.”
20. In the submission of the Applicant the document clearly indicated that an offer of £7,500 had been made within the medical negligence proceedings, and that upon acceptance that would bring to an end the medical negligence claim. It meant nothing else.

21. When he sought to suggest that proceedings had been issued and/or an offer had been received in respect of the medical negligence claim, whether expressly or by implication, the Respondent knew that that was not the true position. He thereby acted with conscious impropriety, and knowingly misrepresented the position to his client.
22. The Respondent knew that what he was doing was wrong. No reasonable, prudent or honest solicitor would have acted as the Respondent did. An honest solicitor would simply have informed Mr MM that he had lost the file, that the claim was statute barred and advised his client immediately to seek independent legal advice.

Allegations (ii) & (iii)

23. Once the Respondent realised that he had lost the file, no proceedings had been issued and that the claim was statute barred, he was under a duty to inform his client of all material facts and to advise his client to seek independent advice. The Respondent did not do so, but continued to act in circumstances where his own interests were in conflict with those of his client. The Respondent's interest was to minimise the claim which lay against him and the client's interest was to maximise it.

Allegation (iv)

24. The overall conduct of the Respondent amounted to a breach of Rule 1 of the Solicitors Practice Rules in that he failed to act in the best interests of his client and as a consequence compromised his own independence and/or integrity and/or the good repute of himself or the profession.

The submissions of the Respondent

25. The Respondent apologised to Mr MM for the added burden upon him that his actions had caused. The Respondent accepted that he had indicated a settlement figure to Mr MM in respect of his medical negligence claim which had not been made by any defendant. A professional negligence claim against the Respondent's firm had been compromised with a payment to Mr MM to cover his loss of a chance to bring a formal medical negligence claim against the hospital. The Law Society had additionally ordered the Respondent to pay to Mr MM an inadequate professional services award of £3,000 and this had been paid.
26. The Respondent first received instructions in 1993. Unfortunately matters started off badly.
27. The Respondent had merged his firm with another and had suffered from medical problems. The Respondent had suffered both financially and in terms of the anxiety which the disciplinary proceedings brought about.
28. It could not be said that the Respondent had behaved dishonestly with regard to clients' money and the Tribunal was invited to consider that the admitted lack of propriety in this case did not fall at the top end of a scale of misconduct.

29. The Tribunal was invited to consider that the four allegations made against the Respondent related to the same conduct and there was, of course, a considerable overlap between the allegations. The facts related to a narrow period of time. The Respondent had not been dishonest over an extended period of time. The immediate crisis developed in December and had been precipitated by two or three visits to the firm by Mr MM. The two documents prepared by the Respondent, it was accepted, could not have been prepared in a moment of madness but did not relate to a protracted period of misleading.
30. The Tribunal was invited to give due weight to the written testimonials handed in in support of the Respondent, all of which attested to his integrity and competence.
31. The Respondent was a married man with two children. He had been a lawyer all his working life and was currently 50 years of age.
32. At the time of the incident before the Tribunal the Respondent's firm undertook Legal Aid work but that was before franchising had come into being and the strict checks and balances required in a franchised firm were not in place. When the Respondent amalgamated his practice with another there had been much consolidation, reorganisation and structural change and that was the situation in which the file became lost.
33. The Respondent remained employed by the firm in which he was formerly a partner and undertook work in the conveyancing field on a full time basis. The firm was aware of the need to obtain permission from The Law Society to continue the employment of the Respondent should the sanction imposed by the Tribunal affect his ability to practise as a solicitor.
34. At his age and with his history the Respondent might well find it difficult to gain employment after the disciplinary hearing and the financial consequences to him were all too plain. Working as he currently did he had a modest salary. He had to meet the bill for the indemnity insurance claim. His children remained in full time education; and his wife worked part time.

The Tribunal's Findings

35. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.

The Tribunal's decision and its reasons

36. Not only was the Tribunal concerned that the Respondent had not frankly and openly admitted his error to his client at which point the client was entitled to and should properly have been referred for independent advice, the Respondent knowing that the client's claim had become statute barred sent him for a medical inspection. That was, in the Tribunal's view, a premeditated act aggravating the Respondent's dishonesty in not being frank with his client. The Tribunal recognised that the Respondent hoped that he would be able to sort out the matter and settle the case without detriment to the

client. The Tribunal noted that the testimonials put in said that the Respondent was an honest man. However, in the case of Mr MM the Respondent got things badly wrong.

37. The Tribunal had taken into account the mitigation offered by the Respondent.
38. The Tribunal found this to be a sad case. The Respondent had admitted the four allegations made against him and that went to his credit. Although there were four allegations the Tribunal recognised that they related to a single set of facts.
39. The behaviour of the Respondent for which he was criticised related to his not informing a client that his claim had become statute barred or that his file had been lost, or that he should have sought independent advice about the matter elsewhere. There was on the part of the Respondent a deliberate deception of the client in making it appear that his claim was ongoing and being handled satisfactorily by sending him for medical investigation and subsequently by making statements as to the amount of damages offered by the negligent hospital trust.
40. The client had turned to the Respondent for advice and guidance. He had relied on the Respondent at a time when he had a potential claim for clinical negligence and he had been badly let down.
41. On the facts the Tribunal found that it could not be said that the Respondent suffered a moment of madness. He had made a deliberate decision to pursue the course of action which he did and that course of action involved misleading the client.
42. The Tribunal considered the mitigation put forward on behalf of the Respondent and noted that he had suffered ill health which had some debilitating effect upon him and the Tribunal had read and taken due note of the written testimonials put in his support.
43. However, given the duties that fall upon a solicitor to act at all times with the highest possible standard of integrity, probity and trustworthiness and finding that in acting dishonestly the Respondent had fallen very far short of those high standards and noting in particular that his actions meant that he had not put the best interests of his client first, the Tribunal concluded that even though the Respondent had enjoyed a hitherto unblemished career and was highly thought of by those who knew him, the appropriate sanction was that of a striking off order.
44. The Tribunal made such order and further ordered that the Respondent pay the costs of and incidental to the application and enquiry in the fixed of £9,000, with which figure the Respondent had agreed.

Dated this 7th day of February 2006

On behalf of the Tribunal

J P Davies
Chairman