

IN THE MATTER OF NICHOLAS POUNDER, solicitor

- and -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A N Spooner (in the chair)

Mr J N Barnecutt

Mr M G Taylor CBE

Date of Hearing: 9th March 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 George Marriott, solicitor advocate and partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 5th September 2005 that Nicholas Pounder of Nottage, Porthcawl, Mid Glamorgan, Wales, solicitor, might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the Respondent was that he was guilty of conduct unbecoming a solicitor in that he was convicted on his own admission on an indictment in the Crown Court containing allegations of theft from clients and was sentenced to a term of imprisonment.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th March 2006 when George Marriott appeared as the Applicant and the Respondent was represented by Mr Andrew Hopper of Queen's Counsel.

The evidence before the Tribunal included the admission of the Respondent.

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

The Tribunal Orders that the Respondent Nicholas Pounder of Nottage, Porthcawl, Mid Glamorgan, Wales, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.

The facts are set out in paragraphs 1 to 23 hereunder:-

1. The Respondent, born in 1958, was admitted as a solicitor in 1983 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was a partner in the firm of David & Snape of Wyndham House, Wyndham Street, Bridgend, CF31 1EP. The Respondent was one of six partners in the firm.
3. On 24th December 2003 two partners contacted the Law Society to advise that the Respondent had misused client funds. Following this, the partners formally expelled the Respondent from the partnership on 6th January 2004. As a result the Law Society investigated the matter on 5th January 2004 and reported on 4th March 2004.
4. The Law Society discovered that improper withdrawals had been made from client bank account by the Respondent. The list of client balances was shown to them as at 30th November 2003 but no reliance could be placed on that because of the improper withdrawals and the potential for other similar withdrawals. However, the Law Society was able to calculate that as a result of the Respondent's activities, there was a cash shortage of £81,250 as at that date relating to clients.

CE - £61,750

5. CE died on 3rd January 2002 and the Respondent and one of his partners were appointed as executors. The residue of the estate was to be divided between three charities. The Respondent misused four separate amounts totalling the above in respect of the estate.

£35,000

6. In February 2002 a cheque for £35,000 was debited from client bank account with the narrative that it was to be paid to one of the charities. In fact it was paid into the personal account of the Respondent.
7. The Respondent created a bogus letter to try to demonstrate that the money had been sent to one of the charities.
8. In an interview the Respondent said that he created the attendance note and the letter to enable him to make the payment to his personal account. His explanation was that the money was to be used to pay disbursements in relation to ongoing litigation on behalf of another unconnected client, but he agreed that he did receive personal benefit as his car loan was being paid from that account.

£12,000

9. Payment of this sum was made to a residential care home in April 2002. On investigation the home told the Law Society that the money was for another individual (DCJ) and that the home had never heard of CE. In fact the Respondent was the receiver for DCJ, who is referred to below.

£8,750

10. On 10th February 2003 a cheque was sent to a firm of solicitors relating to another client, not CE, concerning the purchase of property. When interviewed, the Respondent explained this was a temporary expedient and that he did intend to repay it.

£6,000

11. The Respondent created a bogus attendance note dated 4th March 2002 concerning a conversation between himself and the Inland Revenue relating to CE's potential liability. He then created a bogus letter purportedly sending a cheque for £6,000 payable to the Inland Revenue. In fact the cheque was made payable to the Inland Revenue but was for the Respondent's personal tax liability.

GR - £7,500

12. The Respondent acted for the sole executor of the estate of the late GR. In February 2003 £7,500 was debited from the relevant account with the narrative 'Natwest money to open new account'. In fact, it was not used to open a new account but was paid into the Respondent's personal account.
13. The Respondent created a draft statement of account and then signed a final estate account which demonstrated that the Respondent had underestimated the value of the estate by £7,500 in order to attempt to disguise the payment to him. The Respondent's explanation was that he had done this in order to pay disbursements on behalf of an unconnected client.

SJ - £12,000

14. The Respondent acted for the trustees of the Trust. On 2nd October 2003, the Respondent sold shares in the Trust to enable cash to be generated to enable him to make a payment of £12,000 from the Trust to client bank account held for the Trust to his personal account. He said that he was doing this to pay disbursements for an unconnected client.

DCJ - £2,028

15. The Respondent acted for DCJ. He was both mentally and physically disabled. A receivership account was opened at a bank and the Respondent was sole signatory. On 14th June 2001 the Respondent instructed the bank to transfer £2,000 plus charges of £28 from the receivership account to a Spanish bank account.

16. The Respondent explained that he wished to have a holiday, was overdrawn, that the money was used as a deposit for the holiday and that it was repaid in July 2001.
17. Following the report, a letter was sent to the Respondent dated 18th March 2004. An explanation was received on his behalf from his solicitor dated 6th May 2004 giving an explanation that the Respondent was suffering from acute and overwhelming stress.
18. The Respondent's former partners on 1st April 2004 stated that further defalcations had been discovered to a gross value of £153,108.32 with a net defalcation of £128,097.38. The letter stated that the defalcations would be made good and that the remaining partners had paid £70,097.38 pending the recovery of the balance from the Respondent.
19. The Respondent also transferred £58,000 to the firm in relation to the client account shortage which the firm placed in client suspense account.
20. When notified of the extra defalcations, the Respondent's solicitor by a letter dated 14th June 2004, stated that the information was being considered but that it should not be assumed that it was accurate.
21. On 17th August 2004 an adjudicator referred the Respondent to the Tribunal.
22. On 12th January 2005 the Respondent was convicted on an indictment containing 18 counts and asked for a total of 71 other offences to be taken into consideration. On 15th July 2005 he was sentenced to a term of imprisonment of 18 months and ordered to pay compensation of £100,962.43.
23. A copy of the Judge's sentencing remarks was before the Tribunal.

The Submissions of the Applicant

24. The indictment covered sums stolen in an approximate sum of £111,000 plus one offence of false accounting. The sums involved in the offences which the Respondent had asked to be taken into consideration amounted to approximately £57,000.
25. The offences had been committed between April 1996 and the end of 2003.
26. The Respondent had repaid £58,000 and had consented to a compensation order in the sum of approximately £101,000.
27. The Tribunal was referred to the following sentencing remarks by the Judge:-

“At all material times covered by the indictment you had the benefit of a practising certificate and you were fully aware at the stage in your practice that you were at of the responsibilities that solicitors have not only towards their clients generally but in particular towards clients who were vulnerable and under a disability. The sad fact is that you betrayed the trust which the general public has in solicitors and their good name and in particular you

betrayed the trust which the Court of Protection placed in you in respect of two vulnerable clients who feature in the indictment in this case.

Because of the position that you occupy, it seems to me that the quality and degree of trust reposed in you because of your profession and your rank in that profession was extremely high and the public is entitled, in my judgment, to have the courts protect them from those who abuse that trust and position.

I am afraid that also the sad reality is that over a considerable period of six years you perpetrated a fraud and thefts upon those who trusted you and who relied upon you. This was no impulse. This was not something which happened on the spur of the moment. It was, rather, a deliberate and protracted course of conduct the result of which was to make even more comfortable the very comfortable lifestyle which you already enjoyed. You were drawing out sums between £30,000 and £45,000 a year maximum between the period 1996-2003 together with expenses. You were drawing out sums, perfectly properly, which entitled you to a comfortable lifestyle, which bought you status in the community and which bought you trust...

The effect upon the victims of your dishonesty is quite clear. In particular the two patients under the Court of Protection were deprived of very considerable sums which would otherwise have been expended for their benefit, for their maintenance and to make their lives more comfortable. You treated the position which you enjoyed as their Receiver as, in effect, a position which entitled you to treat the funds available to them as your own personal bank account. I further take into account that you covered your tracks quite deliberately by setting false paper trails and by making your ultimate detection even more difficult than it already was.

In those circumstances I take the view that the impact of your behaviour upon the public and public confidence, let alone the effect and impact upon the victims, is very considerable and I further take into account that your conduct had a similar and devastating effect upon your partners and employees in the partnership who thought the world of you and who looked up to you and who were shocked and shattered when the extent of your dishonesty became apparent...

You are, I accept, a man who is entitled to rely upon his previous good character; you are, I accept, a man who was held in high regard by the community in which he lived. Had they known the full truth, perhaps, some of the testimonials which are before me might have been less eulogistic and rather different. But I do take into account the status and good character that you enjoyed within your community in the past when I come to sentence you.

I also bear in mind that you have attempted to make reparation firstly by incurring a loan, secondly by submitting to a compensation order which I think is entirely appropriate, and thirdly by conceding that it will be available to your partners to take proceedings against you in the future to recover anything which remains outstanding. That is very much to your credit.

I bear in mind the fact that although you initially prevaricated - and did so in what I regard as a highly unattractive way - you nevertheless accepted at the end of the day the reality in which you found yourself and you pleaded Guilty at the first available opportunity. You therefore are entitled to the very full credit which the courts always give to frankness of that sort. I further take into account that for a professional man the immediate sentence of imprisonment which I have to pass will be very difficult to bear. That is a proper consideration and a consideration to which I am entitled to have account because of the helpful list of relevant factors which were put before the courts for guidance in the cases of Barrick and Clark, namely the effect upon you yourself and the effect of your own history and matters of mitigation at the end of the day.

I have to do justice between you and the community. As I have said, the only way I can do so is to pass an immediate custodial sentence.”

28. The Tribunal was referred to the case of Bolton -v- The Law Society 1994 1 WLR 512 in considering this matter.

Submissions on behalf of the Respondent

29. The Respondent was entirely realistic about what would happen and nothing novel would be made by way of submissions. As a matter of fairness however the Tribunal was asked to hear the Respondent’s side of the story. It was submitted that the learned Judge had not got matters entirely right in his sentencing remarks, or else a longer sentence would have been imposed upon the Respondent. There had been no intent by the Respondent to improve his lifestyle nor to take advantage of vulnerable clients. The Tribunal was referred to the letter of testimonial from the Respondent’s father stating that his son’s lifestyle was by no means affluent. This case was not a case of a solicitor feathering his lifestyle.
30. The receivership account in this matter was a reserve account separate from the normal funds for the day-to-day needs of the client and there had therefore been no prejudice to the client.
31. The matter was very typical of a case resulting from pressures in the workplace leading to uncharacteristic actions. It arose from pressure and an inability to cope with confrontation. The practice had since the early 1990s been suffering from constant financial pressure which bore directly on the Respondent as he was the most profitable member of the firm and the partners depended on him. The firm was always under pressure from the bank to pay VAT and to pay wages.
32. Because of the Respondent’s personality he was isolated and absorbed stress. He was not sympathetically supported by the partners but saw himself as someone to be depended on.
33. The trigger to the events had been one difficult and demanding client who was important from the point of view of the partners as he was likely to be a very significant source of costs. No-one but the Respondent could cope with him in the practice.

34. The Respondent had had instructions from the client to enforce an English judgement in a foreign jurisdiction. Without the support of his partners but within the financial constraints of the practice and with a desire to retain the client, the Respondent had been in an intolerable position. He had made his first mistake by using funds from another client to meet the disbursements including foreign lawyers' fees. Decent, ordinary solicitors could crack under stress and do things which were wholly uncharacteristic.
35. Once the first error had been made it had been easier for the Respondent to use the same solution.
36. There had been minor personal benefit to the Respondent and matters had always been balanced by a right to costs. In his substantial misjudgement he felt that he had been entitled to do what he did.
37. This was a sad story. It was not the first time something similar had happened in the firm. Another fee-earner had cracked in a similar manner but had not been dealt with in the same way. This showed the pressured and dangerous environment within the firm. This was not put forward as an excuse but was part of the pattern of solicitors doing things under pressure which they would not dream themselves to be capable of doing.
38. The Tribunal was referred to paragraphs 12 to 15 of the psychiatric report referring to the combination of the Respondent's personality and the circumstances in which he was functioning and stating that he was clearly functioning under extreme psychological pressure. Counsel for the Respondent disavowed the recommendation in the final paragraph of the report and took a realistic view of the outcome of the hearing.

Submissions as to costs

39. The Applicant sought his costs in the sum of £7,500. A schedule of costs was before the Tribunal. The Applicant submitted that the Respondent had assets as he had agreed to a compensation order and to pay the costs of the prosecution. The work set out in the schedule had been fairly and reasonably done by the Law Society and there was no excessive claim.
40. On behalf of the Respondent it was accepted that there had necessarily been a forensic investigation and that was not challenged. It was submitted strongly however that it had been known from the time of the Police proceedings that there would be a likely early plea and that this would be a conviction case. The Law Society costs would therefore normally not be expected to be above £1,000. In relation to the compensation order, the Respondent had been owed more than that sum by his former partners so the one would net off against the other. The Respondent was not in a good financial position and details were given to the Tribunal. The Respondent's Counsel was present without expectation of reward. The Tribunal was asked to judge the costs on the basis of reasonableness and proportionality.

The Findings of the Tribunal

41. The Tribunal found the allegation to have been substantiated, indeed it was not contested.
42. This was a serious matter involving dishonesty in the course of the Respondent's practice and a conviction in the Crown Court. The Respondent's dishonest behaviour had extended over a six year period. The Tribunal considered it right to take note of the sentencing remarks of the learned Judge. The Tribunal had also taken due note of the psychiatric report. Counsel for the Respondent had referred to the "pressured and dangerous environment" in which the Respondent worked. Many solicitors, however, worked under enormous pressure and it was clear that the Respondent knew that what he was doing was wrong. The prolonged course of misconduct had included attempts to disguise his actions. Sums of money had clearly been used for the Respondent's personal benefit. It had been submitted that matters had started with a difficult client. All solicitors had some difficult clients and solicitors had to deal with them. The Tribunal noted that Counsel for the Respondent had disavowed the final paragraph of the psychiatric report. The Tribunal was satisfied that in this very serious case the appropriate sanction was to strike the Respondent's name off the Roll of Solicitors.
43. The Tribunal had considered carefully the submissions as to costs. The Tribunal did not accept the submission that a conviction case should only involve legal costs of £1,000. A schedule setting out the work done by the Applicant was before the Tribunal. The Tribunal would exercise its discretion summarily to assess the costs and would order the Respondent to pay £7,000.
44. The Tribunal made the following order:-

The Tribunal Orders that the Respondent Nicholas Pounder of Nottage, Porthcawl, Mid Glamorgan, solicitor, be struck off the Roll of Solicitors and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.

Dated this 18th day of May 2006
On behalf of the Tribunal

A N Spooner
Chairman