

IN THE MATTER OF SEAMUS MCGUINNESS,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr P Haworth (in the chair)  
Mr L N Gilford  
Mr M G Taylor CBE

Date of Hearing: 11th May 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 Geoffrey Williams of Queen's Counsel on 16th September 2005 that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by The Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice as a solicitor Seamus McGuinness of Tunbridge Wells, Kent, a person who was or had been employed or remunerated by a solicitor or that such other order might be made as the Tribunal should think fit.

The allegation was that the Respondent having been employed or remunerated by solicitors but not being a solicitor, had in the opinion of The Law Society occasioned or been a party to with or without the connivance of the solicitors by whom he was or had been employed or remunerated, acted or defaulted in relation to those solicitors' practices which involved conduct on his part of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed or remunerated by solicitors in connection with their practices.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Geoffrey Williams of Queen's Counsel appeared as the Applicant and the Respondent did not appear and was not represented.

## **Application for an Adjournment**

The Tribunal had before it a letter received from the Respondent dated 10th May 2006 in which he said:-

“It is with regret that I am writing to inform you that I will be unable to attend this hearing tomorrow. By way of explanation, my 16 year old daughter suffered an injury to her foot earlier today at a livery stable outside Canterbury she is attending to gain work experience. The injury is not serious but will involve a five hour round trip to pick her up and possibly a visit to casualty to check for any possible bone fracture.

I have spoken on the telephone to Geoffrey Williams to advise him and am sending a copy of this letter to him.

I am aware that the Tribunal may decide to proceed in my absence but I would ask that my request for an adjournment is considered.”

The Applicant took the view that whether or not an adjournment was to be granted was a matter for the Tribunal, but pointed out that the Respondent would until the substantive hearing be permitted to be employed by a solicitor at a time when an order restricting such employment might well have been appropriate.

The Tribunal considered that it had a duty first to protect the public and the good reputation of the solicitors' profession. The Respondent had provided no explanation as to why another person could not have dealt with his daughter's apparently minor accident. Further it was noted that the accident had taken place on 10th May 2006 and the hearing was taking place on 11th May 2006. The Tribunal concluded that there was no good reason why an adjournment should be granted and refused the application. The Tribunal required the matter to proceed to a full hearing.

The evidence before the Tribunal included the documentary evidence supplied by the Applicant which had been subject to Civil Evidence Act Notices and Notices served under the Tribunal's Rules of Procedure. No counter-notices had been received.

At the conclusion of the hearing the Tribunal made the following order (in the current form representing Section 43 of the Solicitors Act 1974 (as amended)):-

The Tribunal Orders that as from the 11th day of May 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice, Seamus McGuinness of Tunbridge Wells, Kent, a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.

**The facts are set out in paragraphs 1 to 8 hereunder:-**

1. At all material times the Respondent, who was not a solicitor, was employed as head of finance by Messrs Cripps Harries Hall Solicitors (the firm) at their offices at Tunbridge Wells, Kent. The Respondent resigned in August 2003.
2. UR was a major client of the firm. An arrangement was agreed whereby the firm would each month send UR a composite fee note with respect to all work done by various fee earners in different and diverse matters within the given month.
3. On 6th August 2003 representatives of the firm met with their reporting accountants to review compliance with the Solicitors Accounts Rules. A problem was identified with the UR account. The Respondent was confronted with the matter and shortly thereafter he resigned.
4. The firm instructed Messrs Grant Thornton, Chartered Accountants, to investigate the matter fully and they produced a Report dated 9th December 2003 which was before the Tribunal.
5. The Forensic Investigation Unit of the Law Society carried out an inspection of the firm's books of account and the Report produced dated 21st March 2004 was before the Tribunal.
6. These two Reports established the following:-
  - (i) The Respondent was responsible for monthly billing of UR;
  - (ii) The Respondent misled the firm and its auditors at the meeting on 6th August 2003;
  - (iii) No composite fee notes had been sent to UR since August 1998, although the Respondent had carried out preparatory work;
  - (iv) The Respondent had tampered with management accounts data to disguise the true position from the firm;
  - (v) The Respondent had made three improper transfers of UR funds from client to office bank account in the total sum of £649,229.37 causing the firm to be in breach of the Solicitors Accounts Rules;
  - (vi) Fee notes with respect to the amounts improperly transferred had not been sent to UR.
7. The firm had reported the matter to The Law Society. It wrote to the Respondent seeking his explanation on 17th August 2004. In his reply on 10th September 2004 the Respondent admitted the contents of the Report of the Forensic Investigation Unit of The Law Society. He confirmed that he had instigated the improper transfers. He also confirmed that he had been responsible for compliance with the Solicitors Accounts Rules at the firm. The Respondent said he did not discuss his problems with any of the partners of the firm. He confirmed that he provided the partners at the

firm with partial financial data in order to cover his improper activities and “buy time”.

8. The amounts improperly transferred by the Respondent were promptly paid back to the client account pending resolution of the situation with UR. The amounts in question did reflect work actually done. The position had been rectified by the delivery of bills to UR.

#### **The Submission of the Applicant**

9. Although the Applicant accepted that the monthly composite billing of UR’s work was a difficult exercise with which the Respondent had problems, the Respondent had knowingly caused breaches of the Solicitors Accounts Rules by virtue of substantial and wholly improper transfers of funds from client to office bank account. He took active steps to conceal his deeds from his employers and thereby exposed them and their clients to risk. In such circumstances the protection afforded to the public and the profession by a Section 43 order was amply justified.

#### **The Findings of the Tribunal**

10. The Tribunal found the allegation to have been substantiated.

#### **The Tribunal’s Decision and its Reasons**

11. An unadmitted person who is given responsibility for compliance with the Solicitors Accounts Rules within a solicitor’s firm carries a heavy burden of responsibility. The Tribunal notes that the Applicant acknowledges that the billing task given to the Respondent was a difficult exercise. The Respondent’s most serious failure was not to tell his employers that he could not cope and to embark upon a series of transfers of money from client to office account. Accurate bills had not been delivered to the client concerned and he had then tried to conceal his activities from his employers. That represented a serious state of affairs. It was right in such circumstances that the future employment of the Respondent within the solicitors’ and the wider legal profession should be subject to control. The Tribunal made the order sought.
12. The Applicant sought the costs of and incidental to the application and enquiry to include a proportion of the costs of the Law Society’s Forensic Investigation Unit. He was prepared to set those costs at £4,000 inclusive. The Tribunal considered that this was a reasonable figure and in order to save the expenditure of more time and expense upon this matter decided to fix the costs in that sum and ordered the Respondent to pay the Applicant’s costs fixed in the sum of £4,000.

Dated this 12<sup>th</sup> day of June 2006

On behalf of the Tribunal

P Haworth  
Chairman