

IN THE MATTER OF DAVID ROY EDWIN SIMS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mr P Kempster
Mr G Fisher

Date of Hearing: 26th October 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 Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke Solicitors of 8 Bedford Row, London, WC1R 6BX on 19th October 2005 that David Roy Edwin Sims, solicitor of Queen's Park, Chester, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely that:-

- (A) Despite not having a Practising Certificate and after he had reported the closure of the firm:-
- (i) The Respondent had live client matters;
 - (ii) The Respondent continued to see clients;
 - (iii) The Respondent operated a client account;

- (iv) The Respondent held £108,605 of clients' money.
- (B) The Respondent failed to reply to correspondence from The Law Society.
- (C) The Respondent failed to advise clients as to the circumstances of storage of their documents.
- (D) The Respondent failed to deal promptly or at all to deal with requests from clients concerning their papers, documents and deeds.
- (E) The Respondent failed to notify all clients that he had retired from practice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 26th October 2006 when Peter Harland Cadman appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included letters written by the Respondent dated 10th January 2006 in which he made partial admissions and 24th October 2006 in which he confirmed he would not attend the hearing and set out his mitigation. The contents of those letters are referred to under the heading 'The Submissions of the Respondent'.

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

The Tribunal Orders that the Respondent David Roy Edwin Sims of Queen`s Park, Chester, 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 £4,000.

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

1. The Respondent, born in 1940, was admitted as a solicitor in 1972. His name remained on the Roll of Solicitors. At the material time he practised as a sole practitioner under the style of David Sims & Co at 20 Hand Bridge, Chester, CH4 5JE.
2. On 16th August 2005 The Law Society resolved to intervene into the Respondent's practice.
3. The Law Society received notification from the Respondent that he was retiring from practice as from 31st October 2004. As a result on 3rd November 2004 The Law Society terminated the Respondent's Practising Certificate.
4. On 21st January 2005 The Law Society was contacted by solicitors on behalf of a client of the Respondent because the client had been attempting unsuccessfully to retrieve deeds from the Respondent, the client had discovered that the firm was closed and its premises occupied by a tailor's shop and a mobile phone number that had been given to the client as the contact number was switched off with no voicemail facility.

5. The Law Society wrote to the Respondent at his firm's address by letters of 21st January 2005 and 11th February 2005. The Respondent did not reply. Later he stated that he had "overlooked" the letters.
6. On 11th February 2005, a pre-intervention officer of The Law Society attended at the Respondent's home address. A copy of the pre-intervention report was before the Tribunal. The Respondent did not hold a current Practising Certificate. He accepted that:-
 - (i) He had two active probate files.
 - (ii) He held £108,605 in client account.
 - (iii) He was still the executor on a probate matter.
 - (iv) Although he was advising clients that two firms of solicitors had offered to store documents, he still had a further 150 wills and deeds where he had not yet notified the clients.
7. During the course of the pre-intervention visit, two clients attended the Respondent's home address to see the Respondent to discuss a will.
8. The Law Society wrote to the Respondent on 15th March 2005 and sent to him a copy of The Law Society's guidance on retiring from practice. Further correspondence between The Law Society and the Respondent ensued. In August the resolution to intervene into the Respondent's practice was made.
9. The intervening agents, Messrs Hill Dickinson, prepared an accountant's report, which was before the Tribunal. In particular it showed that the Respondent, after November 2004, made numerous payments from client account and accepted a large number of receipts into client account.

The Submissions of the Applicant

10. The Respondent had intimated to The Law Society his intention to retire and he ceased to hold a Practising Certificate. Despite not being certificated he saw clients, he had live client matters and continued to operate a client account. The Respondent had not replied to correspondence addressed to him by The Law Society even though The Law Society had been generous in the time it had given to him to deal with matters. The Respondent failed to advise his clients about the storage of their documents and had not dealt properly with client documents which he held. He had not notified clients that he had retired nor that he had ceased to hold a Practising Certificate.

The Submissions of the Respondent (contained in his beforementioned letters dated 10th January and 24th October 2006)

11. At the point of The Law Society's intervention the Respondent had matters which were live to the extent that it had not been possible for him to effect a handover to other solicitors or bring them to a conclusion. He was seeking to dispose of all active files and the wills and deeds in his possession.
12. The clients who called at the Respondent's home while the pre-intervention officer was there had called to discuss arrangements for the transfer of ongoing work which he had been conducting. They were not there for the purpose of giving instructions.
13. The upheaval of closing his former office and work associated with the relocation to his home led to delays in dealing with correspondence for which the Respondent apologised. Since April 2004 the Respondent had been engaged in writing to clients for whom he was holding wills and deeds requesting instructions for future storage or disposal.
14. With regard to the complaint that the Respondent could not be contacted on his mobile phone, he said that his voicemail facility had not been functioning. The fault had been remedied and no further difficulties arose.
15. The Respondent and his wife were two of the executors of the will of the late Mrs C, who was his wife's cousin. The Respondent was winding up the estate on behalf of all the executors. At the point when his Practising Certificate expired he was dealing with the sale of the deceased's property. There was no reason why a non-solicitor should not undertake conveyancing. The Respondent and his wife were the sole residuary beneficiaries and apart from a balance due to a charitable beneficiary, which could not be paid until the sale of the property had been completed and the agents' fees paid, the surplus was payable to the Respondent and his wife.
16. With regard to the remainder of the payments out of the client account they consisted almost entirely of Land Registry fees and the transfer of sums to the office account to settle costs due to the Respondent. These small payments were made in the belief that they could be made as they related to completed transactions and would facilitate closure of the files. There had been only 10 receipts into the Respondent's client account.
17. The Respondent's wife suffered from mental ill-health which was particularly difficult to treat. She had had to seek early retirement from the Crown Prosecution Service on medical grounds. She had spent periods as a hospital in-patient and her condition had worsened. In July 2005 the Respondent's wife suffered a minor stroke.
18. His wife's ill-health had thrown an increasing burden on the Respondent and had a strong bearing upon his decision to close his practice as quickly as possible. He advertised it for sale in January 2004. He did not receive any offers and in April 2004 he closed the practice. From that point he declined all new instructions and concentrated his efforts on winding it down. That had taken longer than he had

anticipated. At 31st October there were still some matters which had not been transferred to new solicitors.

19. The intervention into the Respondent's practice had not revealed any shortages in respect of monies due to clients. After 31st October 2004 the Respondent did not hold himself out as being a solicitor and he did not refer to himself whether in writing or otherwise as being other than a retired solicitor.
20. The Respondent had not abandoned his former clients and until the time of the intervention he continued to contact them for instructions on the disposal of files. Where the matter was ongoing and involved deeds and wills he put in place a telephone diversion arrangement. The new occupier of the office premises would put clients who called in touch and the Respondent retained his DX box. He was contactable by former clients should that be required.
21. The Respondent accepted that he committed a breach of the rules in failing to ensure that he did not hold client monies whilst uncertificated. That state of affairs did not arise until after he closed the practice and in the circumstances that was effectively unavoidable. There was no deliberate intention on the Respondent's part to flout any requirements.
22. Two years had elapsed since the closure of the Respondent's practice. He had retired and bearing in mind his age he had no intention of resuming any form of employment whether in the law or otherwise.
23. As a consequence of the intervention the Respondent had been ordered to pay costs of £46,000, which was in itself a substantial punishment.

The Tribunal's Findings

24. The Tribunal found the allegations to have been substantiated. It noted the Respondent's explanation that the ladies who called at his home in the presence of the pre-intervention officer had been said by the Respondent not to have given him instructions about their wills, but the Tribunal preferred the evidence of the pre-intervention officer and concluded that the ladies concerned were live clients giving current and ongoing instructions.

Previous hearings before the Tribunal

25. At a hearing on 15th November 1990 the Tribunal found the following allegations substantiated, namely that the Respondent had been guilty of conduct unbecoming a solicitor in that:-
 - (i) he had failed to reply to correspondence from the Solicitors' Complaints Bureau either promptly or at all;

- (ii) he had unreasonably delayed in delivering up deeds to a party entitled to the same upon proper request being made;
 - (iii) he had failed to reply to correspondence from a client either promptly or at all.
26. The Tribunal in 1990 accepted that the Respondent was more sinned against than sinning but nevertheless, he brought his misfortunes to a large extent upon himself by looking at the matter too subjectively. No doubt, in his effort to spare his client's feeling, he attempted to be too placatory in the first instance and then tried to ignore the problem hoping it would go away. The Tribunal accepted that, although largely the architect of his own misfortune, the Respondent was nevertheless at some fault. However, the Tribunal could only deprecate the methods used by some complainants in pursuing a complaint via the Solicitors Complaints Bureau without being completely sure of their client's own case. The Tribunal had ordered that the Respondent be reprimanded.
27. Following a hearing on 27th April 2004 the Tribunal found the following allegations to have been substantiated. The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-
- (a) that he utilised clients' money for the benefit of other clients;
 - (b) that he had been guilty of unreasonable delay in the conduct of professional business;
 - (c) that he failed to reply promptly or at all to correspondence;
 - (d) that he provided information to lay clients and/or others that was misleading.
28. In its written Findings dated 3rd August 2004 the Tribunal said:-
- “79. The Tribunal had considered the findings of 15th November 1990 but accepted the submissions on behalf of the Respondent that this had been a minor matter some considerable time ago.
80. In relation to allegation (a) the Tribunal accepted that this had arisen as a result of an error on the part of the Respondent and that that matter alone would not have caused the Respondent to be referred to the Tribunal. In the circumstances the Tribunal ordered no separate sanction in respect of allegation (a).
81. In relation to allegation (b) the Respondent had been guilty of delay in these probate matters and that was unacceptable. The Tribunal took into account the Respondent's particular circumstances, details of which had been given to the Tribunal. The Tribunal also took into account in the matter of the estates of Mr and Mrs A the fact that the Respondent had paid compensation to the clients and had complied with the order limiting his costs. In the matter of the estate of Mr G however there had been a serious delay of some four years. But for the matters set out at paragraph 84 below the Tribunal would have

ordered a fine of £2,000 to be paid by the Respondent in respect of allegation (b).

82. In relation to allegation (c) the Tribunal had found the allegation substantiated but did not consider the Respondent's conduct to be at the most serious end of the scale. In view of the matters set out at paragraph 84 below the Tribunal would not order a separate fine in relation to allegation (c).
83. The Tribunal took a serious view of allegation (d). There was no allegation of dishonesty and the Tribunal did not find dishonesty but the Respondent had not been entirely open and frank with his clients. Clients were entitled to a full picture of what was happening on their case whether that picture was good or bad. The Tribunal would have ordered a fine of £4,000 to be paid by the Respondent in respect of this allegation but for the matters at paragraph 84 below.
84. The Tribunal had noted and took into account the delay on the part of the OSS in dealing with this matter. The matter had not been complicated and the Respondent had co-operated. No explanation had been put forward by the OSS which could account for a delay of three years between the date of the Report and the bringing of the matter before the Tribunal. The Tribunal would have imposed fines totalling £6,000 but the Tribunal would reduce the fines by half to reflect its concern at the delay and at the length of time which this matter had been hanging over the head of the Respondent.
85. The Tribunal had considered the submissions in relation to costs and would award the Applicant's legal costs of £2,000. Given the Tribunal's serious concerns regarding the delays by the OSS in this matter, however, the Tribunal would award only £1,000 in relation to the costs of the forensic investigation. The Respondent would therefore be ordered to pay a total of £3,000 costs.
86. The Tribunal made the following order:-

The Tribunal order that the respondent, David Roy Edwin Sims c/o David Sims & Co, Handbridge, Chester, CH4 7JE , solicitor, do pay a fine of £3,000, such penalty to be forfeit to Her Majesty the Queen, and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000."

The Tribunal's Decision and its Reasons

29. The Tribunal was dismayed to find that the Respondent was appearing before it on a third occasion. Whilst the Tribunal accepted that the first appearance had been some time ago, the Respondent had had allegations substantiated against him as recently as April 2004.
30. The Respondent appears to have paid no heed at all to his professional responsibilities when acting as a solicitor. It is important that a solicitor in practice holds a current

Practising Certificate to demonstrate that he is being regulated by The Law Society and that all of the protections for the public that such regulation brings are in place. The Respondent had simply disregarded that requirement and had carried on undertaking work for clients and, perhaps most seriously of all, holding client money and conducting transactions through his client account without any regard for the requirement that he hold a current Practising Certificate. The Respondent could not be said to have looked after the best interests of his clients at all times. They appear to some degree to have been left “high and dry”.

31. The Respondent’s failure to meet his professional obligations amounted to a serious breach. In all of the circumstances the Tribunal considered it right that he should be struck off the Roll of Solicitors. The Applicant sought his costs fixed in the inclusive sum of £4,000. This appeared to the Tribunal to be entirely reasonable. It was right that the Respondent pay the Applicant’s costs and the Tribunal ordered him to pay them in the fixed sum sought.

Dated this 12th day of January 2007

On behalf of the Tribunal

A H B Holmes
Chairman