

IN THE MATTER OF PHILIP DAVID DOUGLAS JOHN OSBORNE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr J P Davies
Mrs V Murray-Chandra

Date of Hearing: 6th July 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 David Elwyn Barton solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE on 8th December 2005 that Philip David Douglas John Osborne a solicitor of Ogmores-by-Sea, Bridgend, 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 unbecoming a solicitor in each of the following respects namely:-

- (a) he used his position as a solicitor to take unfair advantage for himself by preparing bills of costs claiming sums that he knew could not be justified, and in so doing he has acted contrary to Rule 1 of the Solicitors' Practice Rules 1990 in a manner likely compromise or impair:-

his independence or integrity
his good repute and that of his profession
his proper standard of work
his duty to act in the best interests of his client

It was alleged that the Respondent was guilty of culpable overcharging and was thereby dishonest;

- (b) he submitted Estate Accounts to beneficiaries which were misleading as to both the amount of assets comprised in an estate and his professional charges, and in so doing he acted contrary to Rule 1 of the Solicitors' Practice Rules 1990 in a manner likely to comprise or impair:-

his independence or integrity
 his good repute and that of the solicitors' profession
 his proper standard of work

It was alleged that the Respondent was dishonest;

- (c) in connection with the administration of two estates he drew or caused to be drawn monies from client account otherwise than as permitted by Rule 22 of the Solicitors' Accounts Rules 1998, and in the case of one such estate dishonestly utilised the said monies for his own benefit.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 6th July 2006 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent contained in his solicitor's letter to the Tribunal of 3rd July 2006.

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

The Tribunal Orders that the Respondent Philip David Douglas John Osborne of Ogmores-by-Sea, Bridgend, 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 to be subject to a detailed assessment unless otherwise agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

The facts are set out in paragraphs 1 to 11 hereunder:-

1. The Respondent born in 1944 was admitted as a solicitor in 1971 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent was practising in partnership as Osborne Jones and Co., from the firm's main office at Singer House, 10 Court House, Bridgend, Mid Glamorgan, CF31 1BN and a branch office at 1A Barons Close House, East Street, Llantwit Major, South Glamorgan, CF61 1XZ.
3. On 10th February 2005 The Law Society's Forensic Investigation Officer commenced an inspection of the Respondent's books of account and other documents and the resulting report dated 14th June 2005 was before the Tribunal.
4. The Respondent acted in the estate of Mr E deceased. The Respondent was one of two executors.

Allegation (a)

5. The Respondent raised 10 bills totalling £26,855.81 between 25th June 2001 and 13th July 2003.
6. In a letter dated 6th June 2005 from the Respondent's solicitor it was stated that the Respondent:-
"accepts that the fees are high and that he intended to make reimbursements to the estate but failed to do so at the conclusion of the matter".
7. In view of the concern over the extent of the firm's billing in relation to the matter the file was sent to Bennet and Shelly Law Costs Draftsman. The Report of Mr Shelly was attached to the Report as appendix 4. Mr Shelly's opinion was that the Respondent's charges were "at the very least, more than three times the maximum reasonable amount".

Allegation (b)

8. The Report noted that the estate accounts found on the Respondent's matter file in relation to Mr E deceased and those sent to two charities who were beneficiaries of the estate differed in material respects in relation to both the estate assets and the Respondent's fees. The assets and the fees were understated in the estate accounts sent to the charities. The firm had forwarded to both of the charities a copy of a bill of costs dated 8th January 2003 in the sum of £2,467.50. There was no evidence to suggest that the charities were aware that the firm had in fact raised ten bills of costs.

Allegation (c)

9. The Respondent acted in the matter of Mr T deceased and was one of two executors. Eight bills of costs had been raised between 20th January 2004 and 1st July 2004 totalling £19,654.50. The letter from the Respondent's solicitor of 6th June 2005 stated that Mrs T was and remained a close friend of the Respondent who had agreed to lend the Respondent a significant sum of money as there were financial difficulties within the firm at the time. The Respondent had decided to deal with this by means of raising a bill of costs which he submitted to her. The money was taken on the basis that it would be repaid and the Respondent had subsequently repaid £14,000.00 out of his own account. He believed that the balance of fees charged to the estate represented reasonable costs but in the light of recent events would repay that balance out of his personal resources.
10. The client matter file contained no evidence of any such loan and when the Investigation Officer wrote to Mrs T she did not reply.
11. The Respondent acted in the matter of the estate of R deceased. Within one month of the Respondent taking instructions in March 2002 he raised two bills totalling £11,129.84. On 21st September 2003 a credit note in the sum of £7,500.00 was raised and the monies transferred back to client account for the benefit of the probate ledger concerned.

The Submissions of the Applicant

12. The Applicant had contacted the Respondent's solicitor who had said that the allegation was not challenged and the papers were accepted. The Applicant had had no communication from the Respondent in the proceedings until his solicitor's letter to the Tribunal of 3rd July 2006.
13. The Respondent who was in failing health was not practising. The Applicant had served a Notice to Admit the facts and documents without response and he relied on the documents and principally the Forensic Investigation Report.
14. In relation to allegation (a) the expert evidence of Mr Shelly had not been challenged. The degree of excess charging supported allegation (a). The submission of the bills had been a deliberate and conscious act which met the tests set out in the case of *Twinsectra v Yardley* in relation to dishonesty. The Tribunal was referred to Mr Shelly's opinion on the billing in his Report which stated:-

“There are no costing notes and no evidence whatsoever to show what calculations were undertaken before the bills were issued. All bills after No 7326 on 3rd September 2001 are self-evidently excessive since, in the light of costs previously taken, any one of them causes the solicitor's costs to exceed “maximum reasonable costs”. It is also disturbing to find frequent billing, particularly a sequence of four bills taken from August to October 2001, and a sequence of four bills taken in January and February 2003. In fact three bills in that sequence were issued over a period of 7 days between 5th February and 11th February 2003”.

The Tribunal was asked to note the frequency of the billing. Further the bills were in round sums and were uninformative as to the work done. All these matters pointed to a dishonest act.
15. In relation to allegation (b) there had been a deliberate process whereby the Respondent had had one set of estate accounts for one purpose and another set for another. The Respondent was in summary covering up how much he had charged. This was part of a dishonest course of conduct.
16. In relation to allegation (c) and the estate of Mr T deceased The Law Society had no evidence to say that the withdrawals were not a loan and, whilst the client file contained no evidence that there was a loan, the absence of such material would not by itself be sufficient to base an allegation of culpable over-charging and dishonesty. Notwithstanding this the Respondent was not entitled to withdraw the stated sums of money from client account and the Investigation Officer's observations of the unorthodox method of taking the loan were understandable. Taking the money as bills was inconsistent with the loan in that it created a VAT liability which undermined the explanation given. The money had been repaid.
17. In relation to the estate of R deceased the transaction constituted a dishonest withdrawal of money from client account for the Respondent's own benefit. He had the benefit of the money for about 18 months. The raising of two bills in such quick succession with the payment back after 18 months supported the allegation that the withdrawals were both improper and dishonest.

18. No detailed explanation had been given by the Respondent to the matters despite detailed enquiries from the Law Society.

The submissions on behalf of the Respondent

19. The submissions were contained in the letter from Messrs Richard Nelson Business Defence Solicitors dated 3rd July 2006 sent on behalf of the Respondent to the Tribunal.
20. The Tribunal was asked to excuse the Respondent's attendance on the ground of ill health and financial hardship and to proceed with the hearing in his absence.
21. The Respondent acknowledged that he had been guilty of conduct unbefitting a solicitor and realised that he would not practise as a solicitor again. He had attempted to withdraw his name from the Roll on a voluntary basis but this had not been accepted by the Law Society.
22. The health of both the Respondent and his wife had been poor for many years and his health would not permit the Respondent to work again. The Tribunal was given details of his health difficulties.
23. The Respondent had provided many years of good service to his clients in the community before the incidents giving rise to the hearing. He had regularly provided pro bono advice and had made contributions in a voluntary and charitable capacity to the community.
24. The Respondent apologised to the Tribunal for what he saw as his stupidity and his conduct which he viewed with complete shame. The actions were aimed to overcome financial difficulties in his branch of the practice, not to fund any lavish lifestyle.
25. The Respondent was now in straitened financial circumstances, reliant on state benefits and facing repossession of his family home. The matters had placed an enormous strain on his marriage and his future was entirely bleak.
26. The Respondent appreciated that the order of the Tribunal would be to prevent him from practising in the future.

The Findings of the Tribunal

27. The Tribunal was satisfied that the letter of 3rd July 2006 from the Respondent's solicitor constituted clear admissions to the allegations including the allegations of dishonesty. The comment at paragraph 24 above was a clear admission of dishonesty and having considered the admission, the documentation and the submissions of the Applicant the Tribunal was satisfied that the allegations were substantiated. The Respondent had clearly taken from estates money to which he was not entitled by way of costs in order to deal with financial difficulties in his practice. The Tribunal noted the Respondent's long service in the profession but in these matters the Respondent had clearly fallen far short of the standards of honesty and integrity expected of solicitors and had thereby damaged the reputation of the profession. It was right that the public be protected by the removal of the Respondent's name from the Roll. It

was right that the Respondent pay the Applicant's costs but in the absence of the Respondent the Tribunal would order that these be assessed if not agreed.

28. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent Philip David Douglas John Osborne of Ogmores-by-Sea, Bridgend, 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 to be subject to a detailed assessment unless otherwise agreed between the parties to include the costs of the Investigation Accountant of the Law Society.

Dated this 12th day of September 2006
On behalf of the Tribunal

J R C Clitheroe
Chairman