

IN THE MATTER OF DAVID ALEXANDER FARBROTHER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date of Hearing: 26th October 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Katrina Elizabeth Wingfield, solicitor and partner in the firm of Penningtons Solicitors LLP, Bucklersbury House, 83 Cannon Street, London, EC4N 8PE on 6<sup>th</sup> March 2006 that David Alexander Farbrother of Burgess Hill, West Sussex, solicitor 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 unbefitting a solicitor namely:

- (i) that he acted in breach of Practice Rule 1(a) and/or 1(d) and/or Principle 17.01 in that he:
  - (a) provided false information in a curriculum vitae to prospective employers;
  - (b) misled his employers regarding the submission of an application for membership of the Solicitors Family Law Association Panel;
  - (c) falsified his CPD record for the year 2003/2004.

- (ii) that he failed to comply with the Training Regulations 1990 (as amended) during the year 2003/2004.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 26<sup>th</sup> October 2006 when Katrina Elizabeth Wingfield appeared as the Applicant and the Respondent did not appear and was not represented.

The Respondent had addressed a letter to the Tribunal dated 20<sup>th</sup> October 2006 which had been received by the Tribunal on 25<sup>th</sup> October 2006. He confirmed that he would not be attending the hearing and asked for the matter to proceed in his absence and he intended no disrespect by his non-attendance.

The evidence before the Tribunal included the admissions of the Respondent as set out in his aforementioned letter and also in an email sent to the Applicant in April 2006. The Tribunal has referred to these documents in greater detail under the heading "The Submissions of the Respondent".

Mrs Elizabeth Taylor, solicitor, gave oral evidence.

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

The Tribunal Orders that the Respondent, David Alexander Farbrother of Burgess Hill, West Sussex, 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 £3,664.70.

**The facts are set out in paragraphs 1-10 hereunder:**

1. The Respondent, born in 1971, was admitted to the Roll on 16<sup>th</sup> October 1995. His name remained on the Roll. He did not hold a current practising certificate.
2. At the material times the Respondent was employed by Bradleys in Dover and from 14<sup>th</sup> June 2004 until 17<sup>th</sup> August 2005 by Edward Harte & Co of 6, Pavilion Parade, Brighton, East Sussex.
3. On 30<sup>th</sup> August 2005 The Law Society received a complaint from Messrs Edward Harte & Co.
4. Matters had come to light because of delays occasioned by the Respondent in submitting an application to become a member of the Solicitors Family Law Association Panel (SFLA) (now Resolution). The Respondent had eventually informed Mrs Taylor (of Edward Harte & Co) in June 2005 that the application had been submitted. Mrs Taylor contacted the SFLA on 8<sup>th</sup> August 2005 when she was informed that no application had been received. No trace could be found of a covering letter. The Respondent on his return from holiday on 11<sup>th</sup> August 2005 volunteered that he had been informed by the SFLA that the application had not been received and informed Mrs Taylor that the form had been written out by hand and given to another partner for countersignature and onward transmission. He stated he had not kept a copy.

5. As a result of her concerns Mrs Taylor contacted the Respondent's previous firm, Bradleys in Dover, by telephone. A number of issues were discussed including providing a reference for the SFLA application and CPD points. In addition she checked the Respondent's original curriculum vitae and noted that he claimed to be an SFLA member at the time that he was first employed by Edward Harte & Co.
6. One reason given by the Respondent for the delay in submitting his application was that he had been awaiting details of his CPD record from Bradleys. Bradleys provided a copy of an email exchange on 20<sup>th</sup> May 2005 between themselves and the Respondent wherein they confirmed the Respondent's CPD record for 2002/2003 and stated he undertook no courses in 2003/2004.
7. Following her conversation with Bradleys on 16<sup>th</sup> August Mrs Taylor asked the Respondent to produce his CPD record for 2003/2004. The Respondent indicated that his record was not in the office but that he would bring it in the next day. This he did and produced a document which purported to show 16 CPD points gained between November 2003 and February 2004.
8. When the matters were put to him on 17<sup>th</sup> August 2005 the Respondent told Mrs Taylor that "he was banged to rights", there were no excuses and he resigned.
9. In a response to enquiry by The Law Society about these issues, the Respondent explained the reference to existing membership of the SFLA on his curriculum vitae stating that he had been an Associate Member but that his membership had lapsed and he had failed to update his curriculum vitae to remove this reference. He denied that he had stated that his application had been submitted and explained the delay by stating he was busy. So far as his CPD position was concerned he conceded that this was incorrect and accepted that it was his responsibility to ensure he was up to date. He stated that his failure in this regard was unintentional.
10. Additional information was obtained from Resolution from which it was clear that the Respondent had been deleted from their membership in December 2000. The Respondent's curriculum vitae demonstrated that he had changed jobs several times after that date.

### **The Submissions of the Applicant**

11. The Respondent must have been aware that he had not undertaken any CPD between November 2003 and October 2004 and that the document he produced to Mrs Taylor was false. In this respect the Applicant alleged that the Respondent had acted dishonestly or with conscious impropriety.
12. Similarly the Respondent must have been aware that he had ceased to be a member of SFLA and yet he had held himself out to be a member in his curriculum vitae.
13. Whilst the areas of complaint might not on their face appear to reflect conduct at the most serious end of the scale, there was no room for dishonesty in the solicitors' profession.

### **The Submissions of the Respondent**

(contained in his aforementioned letter of 20<sup>th</sup> October 2006 and his email of April 2006)

14. The Respondent conceded that there had been an outdated reference on his curriculum vitae. It should have been removed. He conceded that it created a false impression, albeit an insignificant (and possibly on the face of it an outdated) one. It was merely confirmation that he was an associate member of the Solicitors Family Law Association. It was abundantly clear that he was not a panel member. Being a member of the SFLA had no cost benefit to his firm, it simply required two colleagues from firms other than his own to confirm that he subscribed to SFLA principles in his dealings. The reference had been accurate during the Respondent's membership.
15. Whether that reference was on his curriculum vitae or not he would have been employed by Edward Harte & Co on the strength of the rest of that substantial document, their pressing need to fill a vacancy and a strong performance at his interview. It was an extremely minor point on his more than solid CV. SFLA had been renamed at the time of his interview and the error should have been apparent to his interviewer.
16. The Respondent had taken over and successfully carried a large caseload which had hitherto been managed by a number of different people on a somewhat ad hoc basis.
17. The Respondent fully accepted that he should have maintained his own CPD record. Edward Harte & Co was under an obligation to keep records themselves and they failed to do this. He had not been reminded about this.
18. The Respondent's working environment, the work he did during the period in question and a family bereavement meant that the Respondent's focus on this matter had been deflected.
19. When he arrived at Edward Harte & Co the Respondent was heavily engaged in sorting out client files, some of which had become urgent. He had "hit the ground running" and he had concentrated on client work. The Respondent's professional competency had not been brought into question.
20. The Respondent prepared a handwritten draft of his SFLA application whilst his secretary was on honeymoon and gave it to the temporary secretary.
21. When the panel application was casually mentioned to him he said that it was "in hand" or something similar. He did not say "I have submitted it" to anyone. He never said "it has gone".
22. The panel application could not have been sent unless signed off by one of the partners at Edward Harte & Co. They would or should have known that no application had been sent; had it been sent they would have had to have been a party to it.
23. The Respondent denied that he had formulated a longstanding scheme to mislead his employers.

24. The Respondent had gone to India to do charitable work. He was not in a sound financial position.

**The Findings of the Tribunal**

25. The Tribunal found the allegations to have been substantiated. The Tribunal was in no doubt that the Respondent's curriculum vitae did contain false information.
26. The Tribunal also found that the Respondent misled his employers about his submission of an application for membership of the Solicitors Family Law Association Panel.
27. The Tribunal found that the Respondent was aware that he had not complied with the training regulations during the year 2003/2004 and he falsified his CPD record for that period.
28. In so finding the Tribunal concludes that the Respondent has been guilty of conscious impropriety.
29. The Tribunal agreed with the Applicant that a person who was prepared to act with such conscious impropriety had no place in the solicitors' profession. Members of the solicitors' profession are required to act at all times with the utmost probity, integrity and trustworthiness and, indeed, in the words of a former Master of the Rolls, "a solicitor must a person who can be trusted to the ends of the Earth". The Respondent has fallen very far short of those requirements. The Tribunal concluded that he was not fit to be a solicitor and ordered that his name be struck off the Roll of Solicitors. It was right that he should pay the costs of and incidental to the application and enquiry. The Applicant quantified her costs at £3,664.70. The Tribunal considered this to be a reasonable sum and Ordered the Respondent to pay the Applicant's costs fixed in the sum sought.

DATED this 12<sup>th</sup> day of January 2007  
on behalf of the Tribunal

A H B Holmes  
Chairman