

IN THE MATTER OF IAN BLACK, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A H B Holmes (in the chair)
Mrs H Baucher
Mr M G Taylor CBE

Date of Hearing: 12th December 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 Iain George Miller, solicitor, formerly with Wright Son & Pepper, solicitors, but subsequently of Bevan Brittan, solicitors, of Fleet Place House, 2 Fleet Place, Holborn Viaduct, London, EC4M 7RF, on 26th May 2006 that Ian Black of Black & Co of 143 Jamaica Road, Bermondsey, London, SE16 4SH, solicitor, might be required to answer the allegations contained in the statement that 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 that:

1. He had delayed in complying with an undertaking given in writing to Messrs Wilkinsons solicitors on 13th September 2002 to forward to them a completed Land Registry form DS1.
2. He had not complied with and/or delayed in complying with an undertaking given to Messrs Levetts solicitors in writing on 1st April 1998 to deal with their costs in connection with a Legal Aid matter concerning a Kim Gorrie.
3. He had not complied with and/or delayed in complying with an undertaking given in writing to Messrs Levetts solicitors on 2nd and/or 17th June 1999 to deal with their costs in reconnection with a legal aid matter concerning a Veronica Glenn.

4. In connection with each or all of the above matters he had not kept the recipients of the undertakings informed of any delay in connection with the performance of the undertakings.
5. He had failed to deal promptly or substantively with correspondence from The Law Society in relation to its investigation of the undertakings described in 1 and 3 above.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS, on 12th December 2006 when Iain George Miller appeared as the Applicant. The Respondent did not appear and was not represented. The Respondent had addressed a letter to the Applicant dated 8th December 2006 which was before the Tribunal and is referred to hereunder.

The evidence before the Tribunal included all of the papers attached to the Applicant's application which had been the subject of notices to admit served upon the Respondent in respect of which no counter-notices had been served.

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

The Tribunal Orders that the Respondent, Ian Black of Black & Co, 143 Jamaica Road, Bermondsey, London, SE16 4SH, 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 £8,000.00 inclusive.

The facts are set out in paragraphs 1-13 hereunder:-

1. The Respondent, born in 1950, was admitted as a solicitor in 1980. At the material times the Respondent practised as a sole practitioner under the name of Black & Co, solicitors at 38 Brockley Cross Business Centre, Brockley, London, SE24 2PD and thereafter in partnership under the same firm name at 143 Jamaica Road, Bermondsey, London, SE16 4SH. The Respondent's name remained on the Roll of Solicitors.

Allegation 1 - Undertaking to Wilkinsons

2. The Respondent acted for the sellers of property and the buyers were represented by Messrs Wilkinsons. On 13th September 2002 the Respondent wrote to Messrs Wilkinsons enclosing various documents and provided the following undertaking:

"In consideration of your completing the purchase of the above property, we hereby undertake as follows.... to forward sufficient funds to Woolwich plc to redeem the registered charge and to forward executed form DSI [*receipt and discharge of mortgage*] to you as soon as the same is to hand".
3. As at 30th November 2004 the DS1 document had not been received by Messrs Wilkinsons from the Respondent. Messrs Wilkinsons had written letters to the Respondent between October 2002 and August 2003 and then wrote a further nine letters between August 2003 and November 2004. The Respondent replied to none of those letters.
4. After The Law Society was notified of the situation, it wrote to the Respondent on 7th and 23rd February and 3rd March 2005 asking for a response. He did not respond.

5. On 6th April 2005, Messrs Wilkinson advised The Law Society that they had completed the registration of their clients' interest.

Undertaking to Levetts in relation to Mrs G

6. Mrs G had instructed Levetts in 1998 in connection with family matters before Bromley County Court. Levetts had been acting under a Legal Aid Certificate that had been granted in May 1998. In June 1999 Mrs G approached the Respondent's firm with a view to transferring her instructions. On 2nd June 1999 an employee of the Respondent's firm wrote to Messrs Levetts confirming that Messrs Black & Co intended to make an application for the transfer of the Legal Aid Certificate and asked Messrs Levetts to forward to them Mrs G's papers. It was said:

"with regard to the costs we will undertake to deal with your costs at the conclusion of the case when we deal with our own Legal Aid Taxation."

7. On 17th June 1999 the Respondent's firm wrote to Messrs Levetts and confirmed the undertaking to deal with Messrs Levetts' costs at the conclusion of the case.
8. In May 2000, the Respondent's firm submitted a form CLS CLAIM1 (the "Claim 1 Form") to the Legal Services Commission (LSC) for payment of their costs. On this form the Respondent's firm informed the LSC that their claim included all of the costs of all other solicitors instructed and no further claims would be made. The Claim 1 Form did not include any of the costs incurred by Levetts.

Undertaking to Levetts in relation to Ms G

9. Ms G had previously instructed Levetts with regard to a family matter and then transferred her instructions to the Respondent's firm. In a letter dated 1st April 1998 the Respondent's firm wrote to Messrs Levetts and asked whether they had any objections to the transfer of the matter, the legal aid certificate and seeking the file of papers. The letter contained the following undertaking:

"We Black & Co will undertake to deal with your costs at the conclusion of the case when we deal with our own legal aid taxation."

10. Proceedings in the matter came to a conclusion at Bromley County Court in 1999. On 22nd February 2001 Messrs Levetts sent to the Respondent a bill that had been signed and agreed by them. The Respondent wrote to Messrs Levetts on 29th November 2001 saying that all documentation had been forwarded to the LSC. Messrs Levetts did not hear any further from the Respondent and they referred the matter to The Law Society in January 2003.
11. The Law Society wrote to the Respondent on 25th March 2004 and asked him for his comments. No response was received. A chasing letter was sent on 10th June 2004. The Respondent contacted The Law Society by telephone in July 2004 and acknowledged that there was an outstanding undertaking. The Respondent explained that his member of staff who had provided the undertaking had left his firm and he was trying to resolve the matter as best he could.

12. The Respondent acknowledged that he had been responsible for long delays and that payment to Messrs Levetts should have been made some time ago. He continued to maintain that he hoped to comply with the undertaking and would keep The Law Society informed of the progress on the matter. The Respondent failed to do so and he was notified by The Law Society on 15th November 2004 that the matter was to be referred for formal adjudication.
13. On 6th January 2005 an Adjudicator allowed further time to the Respondent to enable him to comply with the undertaking but no further progress was made.

The submissions of the Applicant

14. Prompt compliance with undertakings is an important element of a solicitor's practice.
15. Undertakings in the form of those given to Levetts were common in a legal aid practice where costs could not be assessed until the end of the matter and it was not possible for a solicitor to exercise a lien over the papers. Such an undertaking enabled a solicitor to release his file on the basis that his entitlement to costs would be preserved. As such, solicitors' undertakings formed an important part of the effective operation of the legal aid system.
16. The Respondent had failed to respond to letters addressed to him on a large scale.
17. There had been extensive correspondence between The Law Society, Messrs Levetts and the Respondent's firm in relation to the undertaking given in Mrs G's matter. Initially the Respondent took the stance that he had complied with the undertaking because a draft bill had been sent to Levetts. Levetts denied the receipt of a draft bill. The step of submitting a draft bill to Levetts fell far short of the Respondent's positive obligation to ensure that Levetts' interests were protected.
18. Subsequently the Respondent seemed to have accepted that he had not complied with the undertaking. Attempts had been made to make a further application to the LSC for costs but so far those attempts had not proved successful.
19. The Respondent had failed to comply with a similar undertaking also given to Levetts.
20. The Applicant accepted that the undertakings to Levetts were given by a member of the Respondent's staff but as a sole principal they were, of course, his responsibility and he was liable for compliance with them.

The Findings of the Tribunal

21. The Tribunal found the allegations to have been substantiated.

Previous Findings of the Tribunal

22. Following a hearing on 21st May 2002 the following allegations were found to have been substantiated against the Respondent. Those allegations were:
 1. that he failed to honour undertakings;
 2. that he failed to deal promptly with correspondence from the OSS;

3. that he failed to maintain properly written and reconciled books of accounts contrary to Rule 11 of the Solicitors Accounts Rules 1991;
 4. that he drew monies out of a client account otherwise than in accordance with Rule 7 of the Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules.
23. In its written Findings dated 22nd August 2002 the Tribunal said:

"The Tribunal found the allegations to have been substantiated indeed they were not contested.

The allegations against the Respondent were very serious and the Tribunal had some concern that the Respondent did not appreciate the significance and importance of the allegations against him. The allegations were so grave that the Tribunal had given serious consideration as to whether the Respondent should be allowed to continue in practice. The Respondent had accepted that he acted inappropriately in failing to comply with an undertaking given to other solicitors. The Tribunal would go further and say that the Respondent had dealt with the matter incompetently. The terms of the undertaking were clear and the Respondent had a clear duty to comply with it.

In relation to the second allegation the Respondent as a solicitor should realise that there was a fundamental duty upon solicitors to respond to correspondence from their professional body. A failure to do so caused enormous delays in the system and had serious consequential effects in the regulation of the profession.

The third and fourth allegations related to Accounts Rules breaches and again the Tribunal considered that the Respondent had acted incompetently. Client money should be treated as sacrosanct and the Respondent had clearly failed to act as he should have done.

The Tribunal was seriously concerned about the lack of judgement shown by the Respondent in relation to these matters which had all been admitted. In addition to the penalty which the Tribunal intended to impose, the Tribunal recommended to The Law Society that The Law Society consider imposing a condition upon the Respondent's Practising Certificate that he practise only in approved employment or partnership. The Tribunal ordered that the Respondent Ian Black of Black & Co 38 Brockley Cross Business Centre, Endwell Road, London, SE4 2PD solicitor pay a fine of £10,000 such penalty to be forfeit to Her Majesty the Queen and they further ordered him to pay the agreed costs of and incidental to the application and enquiry fixed in the sum of £1,900."

The Respondent's Mitigation (contained in his before-mentioned letter addressed to the Applicant dated 8th December 2006)

24. The Respondent said that owing to partnership problems he had been forced to close his practice and that had led to a tremendous amount of work and stress.

25. The worry and stress of the disciplinary proceedings and the closure of his firm had made him ill which had in turn made dealing with everything even more difficult.
26. The Respondent said that in view of his past appearance before the Tribunal and the fact that while even The Law Society accepted that he had simply made mistakes, the Tribunal treated him almost like a criminal and he did not believe that there was any point in trying to discuss the facts of the current matter.
27. The Respondent had consistently tried over the past few years, since he became aware of the undertakings given by his former employee, to deal with the costs due to Mr C (of Levetts). The bills and necessary documents were sent for final payment in May 2005 but in spite of that and a number of calls made to the Legal Aid Office he had only just received a letter confirming that the costs in one of the matters would be paid. Levetts had indicated that following their intervention payment had occurred.
28. After many attempts the Respondent had found a costs draftsman who had agreed to finish not only Ms G's case but also a number of other cases in relation to which the Respondent's firm had not received payment of costs. The draftsman would be pressed by the Respondent to deal with the matter of Mrs G as a priority.
29. The Respondent would not attend before the Tribunal in view of his state of health and the fact that he was having to try to find a new job. No disrespect to the Tribunal was intended.
30. The Respondent acknowledged that he had been supplied with details of the Applicant's costs. He considered that they were excessive and did not properly represent the amount of work undertaken by the Applicant. As a result of closing his firm the Respondent owed rather more than the value of his assets and he fully expected to be made bankrupt at some point in the New Year.
31. The Respondent did not expect to be able to find a job in the legal profession. He considered that solicitors were considered by The Law Society to be guilty until they could prove their innocence.

The Tribunal's Decision and its Reasons

32. It is implicit during the course of a solicitor's practice that he gives undertakings upon which total reliance can be placed. A solicitor's formal undertaking is often crucial to the satisfactory completion of transactions, particularly in the field of conveyancing, and it is of fundamental importance that any person accepting an undertaking from a solicitor does so in the certain knowledge that a solicitor will comply fully with the terms of that undertaking within a reasonable time. If undertakings given during the course of conveyancing transactions could not be relied upon the system of conveyancing in England and Wales would be materially affected and the costs of conveyancing falling upon members of the public would be substantially increased. Firms of solicitors who undertake work on behalf of legally-aided clients who decide to instruct new firms of solicitors are equally entitled to expect that the new firm of solicitors will take every step necessary to fulfil an undertaking given to secure the payment of the original firm's costs from the Legal Services Commission.
33. Whilst it was accepted that the undertakings to Levetts appeared to have been given by a member of staff, the Respondent was a sole principal and was absolutely liable for compliance with any undertaking emanating from his office.

34. An aggravating feature in this case was the Respondent's failure to respond to a great many letters addressed to him. Whilst some of his failures occurred at about the same time as the failures dealt with by the Tribunal at the earlier disciplinary hearing, some of the failures in this case occurred shortly after the previous Tribunal decision and at a time when the Respondent was left in no doubt of the Tribunal's severe disapproval of his behaviour. He had ignored the warning implicit in the Tribunal's earlier decision.
35. The Tribunal concluded that the Respondent was not fit to practise as a solicitor. The Tribunal ordered that the Respondent be struck off the Roll of Solicitors.
36. The Tribunal gave careful consideration to the costs claimed by the Applicant. It was right in principle that the Respondent should bear the costs of and incidental to the application and enquiry. The Tribunal noted that the Respondent did not consider that the quantum of costs claimed by the Applicant properly represented the work he had undertaken. The Applicant had pointed out that he had been passed a number of substantial files by The Law Society and he had spent considerable time distilling the contents of those files so as to provide a succinct and manageable Rule 4 Statement and supporting documents.
37. Considering the sum claimed to be reasonable and appropriate and in order to save further time and cost the Tribunal decided summarily to fix the Applicant's costs at £8,000 inclusive.

DATED this 7th day of February 2007
on behalf of the Tribunal

A H B Holmes
Chairman