

IN THE MATTER OF LISA MARGARET CARTER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Ms A Banks
Lady Bonham Carter

Date of Hearing: 22nd February 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack Roscoe and Coleman, 70 Marylebone Lane, London, W1U 2PQ on 30th May 2006 that Lisa Margaret Carter of 4Chadderton, Oldham, Lancashire, 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 unbecoming a solicitor in the following particulars, namely that:-

- (a) She failed to act in the best interests of her client(s) in breach of Rule 1(c) of the Solicitors Practice Rules 1990;
- (b) Her conduct was likely to compromise or impair her good repute as a solicitor or of the solicitors' profession in breach of Rule 1(d) of the Solicitors Practice Rules 1990;
- (c) Her conduct was likely to compromise or impair her proper standard of work as a solicitor in breach of Rule 1(e) of the Solicitors Practice Rules 1990;

- (d) She improperly withdrew client money from client account and in breach of Rule 22 of the Solicitors Accounts Rules 1998;
- (e) Her conduct in respect of the above alleged breaches was dishonest.

The further allegations against the Respondent were that she acted in breach of the Solicitors Accounts Rules 1998 in the following particulars, namely that:-

- (f) She failed to keep accounting records in breach of Rule 32 of the Solicitors Accounts Rules 1998;
- (g) She allowed the debit of bank charges from her client account in breach of Rules 7 and 22 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 22nd February 2007 when Robert Simon Roscoe appeared as the Applicant and the Respondent was represented by Stuart Turner, solicitor of Lonsdales Solicitors of 7 Fishergate Court, Fishergate, Preston, PR1 8QF.

The evidence before the Tribunal included the admissions of the Respondent of all of the allegations save allegation (e). The Respondent denied that she had been dishonest. The Respondent gave oral evidence.

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

The Tribunal Orders (in respect of allegations 3(a) and (b) in the statement of the Applicant dated 30th May 2006) that the Respondent Lisa Margaret Carter of Chadderton, Oldham, Lancashire, solicitor, be reprimanded.

The Tribunal Orders (in respect of the remaining allegations) that the Respondent be struck off the Roll of Solicitors and it further Orders that she 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 25 hereunder:-

1. The Respondent, born in 1966, was admitted as a solicitor in 1994. Her name remained on the Roll of Solicitors.
2. The Respondent graduated from Manchester Polytechnic and took her Law Society finals at the College of Law, Chester. Her training contract had been with a firm in Manchester and prior to joining Walker, Crompton Halliwell Solicitors in October 2001 she had worked as an assistant solicitor at other high street practices in the Greater Manchester area. She was a Law Society Family Panel member and a panel member of the Solicitors Family Law Association. At the time of the disciplinary hearing the Respondent was employed as a locum by Tameside Borough Council as a Public Law Children Act solicitor. Subject to the outcome of these disciplinary proceedings the Respondent had received an offer of permanent employment from the local authority.

3. During the period relevant to the allegations (a) to (e) the Respondent was an assistant solicitor employed by Walker Crompton Halliwell, solicitors of Bury, Lancashire.
4. During the period relevant to allegations (f) and (g), the Respondent was a solicitor in partnership at CK Legal Solicitors at Oldham, Lancashire.

Allegations (a), (b), (c), (d) and (e)

5. The Respondent had been employed by Walker Crompton Halliwell (WCH) until July 2004 when she left of her own volition. Following her resignation the firm was unable to locate various client matter files of which the Respondent had conduct. Subsequently, the firm's accountants reported Solicitors Accounts Rules breaches to the firm.
6. The Law Society's Investigation Officer (the IO) inspected the books of account of WCH. In his report dated 23rd November 2005, which was before the Tribunal, the IO summarised certain of the Respondent's dealings with monies received by the firm on behalf of six clients for whom she was acting where she deliberately arranged for various receipts and payments wrongly to be posted to the ledger accounts of other clients.

Mrs W - divorce

7. The Respondent acted for Mrs W. A Court Order dated 10th June 2002 instructed Mr W to pay the sum of £13,000 to Mrs W.
8. The following entries appeared on the relevant client ledger:-

Date	Payee/Payer	Description	Receipt/(Payment)	Note
31/03/03	Read Roper	Settlement	£17,000.00	1
01/04/03	Mrs PW	Settlement	(10,003.63)	2
07/04/03	Mrs Wh	re Settlement	(5,000.00)	3
07/04/03	Mr W	re Settlement	(500.00)	4
07/04/03	Transfer to office account		(1,496.37)	5

9. The IO noted that the receipt of £17,000 related to the unconnected client file of Mrs Wh as did the payment of £5,000. The payments to Mrs W were properly made as was the transfer of costs.

Mrs Wh

10. The client file for this matter could not be located for review. A costs taxation file indicated that Mrs Wh's claim had been made under the Inheritance (Provision for Family and Dependents) Act 1975.
11. The client ledger account for this matter showed no postings having been made up to the date of the Respondent's departure from the practice. A settlement had been reached and £17,000 was received by the practice on or around 31st March 2003. That receipt was posted to the unrelated client ledger account of Mrs W.

12. Other payments were made in respect of this matter but were not charged to this client ledger account. On 24th October 2003 £8,000 was paid to P and on 7th April 2004 £5,000 was paid to Mrs Wh. The payment of £8,000 was posted to the unrelated client ledger of Mr Wi. The payment of £5,000 was posted to the unrelated client ledger of Mrs W.

Mr Wi - divorce and conveyancing

13. The Respondent acted for Mr Wi in divorce proceedings (WHL's conveyancing department handled the sale of the former matrimonial home).
14. On 24th October 2003 the client ledger account for the divorce matter was charged with a payment of £8,000 with the narrative "L. P only - settlement". This payment actually related to the unconnected client file of Ms Wh.
15. On 9th December 2003 a payment of £6,442.46 was made in connection with Mr Wi's matter but this payment was debited to the unrelated client ledger account of Mr D.

Mr D - divorce proceedings

16. The Respondent acted for Mr D. On 9th December 2003 £6,442.46 had been paid from this client ledger account in respect of the unrelated client matter of Mrs W.
17. A client account receipt of £5,000 had been posted to this client ledger account on 19th March 2004. This sum was actually in respect of the unrelated client matter of Mrs G. On 1st June 2004 £1,317.16 was paid in respect of this matter but it was charged to the unrelated client matter of Mrs We.

Mrs We - claim for ancillary relief

18. The payment of £1,317.16 was charged to this client ledger account on 1st June 2004 but it related to the unconnected client matter file of Mr D.
19. Mrs G did receive her settlement. The money was paid from personal funds of the Respondent.
20. The IO discussed his findings with the Respondent on 31st August 2005 when she accepted that she had retained the six client matter files after leaving the firm. She offered no explanation as to why she had done so.
21. At a further meeting between the Respondent and the IO on 31st October 2005 the Respondent accepted that she had acted in breach of the Solicitors Accounts Rules by using one client's money to pay out to other unconnected clients.
22. In her oral evidence the Respondent accepted that she had given instructions to WHC's accounts department in connection with all of the transactions referred to in the IO's Report by completing paper instruction slips. The Respondent was unable to recall whether she had introduced the £5,000 by way of a banker's draft or a personal cheque.

Allegations (f) and (g)

23. On 30th August 2005 the IO attended the Respondent's practice, CK Legal, Solicitors, to inspect the books of account and other documents.
24. The IO's Report dated 21st December 2005 was before the Tribunal. The IO reported that the Respondent's books of account were not in compliance with Rule 32 of the Solicitors Accounts Rules as bank charges had been debited from the general client bank account. The Respondent's books of account had not been properly reconciled so it was not clear whether the charges had been repaid.
25. At her meeting with the IO on 6th October 2005 the Respondent accepted that she had breached the Solicitors Accounts Rules.

The Submissions of the Applicant

26. The Respondent had admitted the allegations. The allegations were in two parts. The first related to the mishandling of clients' money by the Respondent which the Applicant invited the Tribunal to find amounted to dishonesty and the second set of allegations related to breaches of the Solicitors Accounts Rules in connection with the Respondent's own practice. In that practice the Respondent had a partner who was, of course, also liable for the Solicitors Accounts Rules breaches in respect of which he had been reprimanded by the Law Society.
27. The mishandling of clients' monies dealt with in the IO's Report of 23rd November 2005 had taken place between 2003 and the Respondent's departure from WCH in 2004. These activities had taken place over a period of about one year.
28. It was the Applicant's position that the payment of monies out to or on behalf of a client from monies belonging to another unconnected client deliberately, and ultimately the payment in of a substantial sum of money from the Respondent's own resources to meet a payment out to a client was dishonest. The Respondent had given explanations but they did not tally with an innocent explanation of what had taken place.
29. The Applicant accepted that the Tribunal would have to be satisfied to a very high standard that the allegation of dishonesty had been substantiated. The test to be applied by the Tribunal was that contained in the case of Twinsectra -v- Yardley and others [2002] UKHL 12.

The Submissions of the Respondent

30. The Respondent had been employed by WCH as a family law assistant solicitor in October 2001. Her brief upon joining them was to work from their Bury Family Department. The firm had four offices. She was also to be the Legal Services Commission franchise supervisor for WCH's Rawtenstall office.
31. The last Legal Services Commission franchise audit before the Respondent's engagement gave WCH the lowest category possible and a great deal of work had to be done. WCH lacked systems and was disorganised and chaotic.

32. The Respondent became more involved with administrative and management matters while at the same time being required to be a fee earner. From the beginning of 2002 she could easily see five new clients a day.
33. The Respondent spent more time at the Rawtenstall office than she had anticipated and by spring 2002 she attended about once a week.
34. The Respondent also worked at weekends regularly and her working days were long.
35. When the Respondent pointed out to the WCH partners that Bury was becoming a victim of its own success and she needed help with the workload one of the partners agreed to see new clients. This meant that he saw clients, opened the file and then passed it to the Respondent, increasing her workload rather than reducing it.
36. The Respondent had also been engaged in raising the profile of the family department. She became involved with Relate and the Domestic Violence Forum. She asked for a case management system and put together a business plan for the family department with the practice manager.
37. The Respondent had been given a great deal of responsibility but despite her efforts her views were not acknowledged and she was not supported.
38. In autumn 2002 the fee earner at the Rawtenstall office left and for four or five months the Respondent had to carry the caseload of both offices.
39. The Respondent was under great pressure of work. She decided to leave when she was at the end of her tether. She was physically and mentally exhausted and could not carry on. She could see no light at the end of the tunnel and felt that she was not doing justice to clients. She felt exasperated that resources were not available and that no partner was interested in the department. She had also heard rumours that the department was to be closed. At the time of her departure the Respondent was carrying a caseload of 381 files.
40. The Respondent had not conducted herself in a dishonest way. At all times she acted in the best interests of her clients. No individual client had suffered financially as a result of her actions. The Respondent had not sought or received any personal gain.
41. With hindsight the Respondent deeply regretted what she had come to regard as an unbelievable action on her part, on the matrimonial matter, which set in motion a chain of events which ultimately resulted in her paying £5,000 of her own money to WCH client account so that no client would suffer. What she did was not carried out with any thought of gain. She was working under extreme pressure trying to juggle her responsibilities between two offices and managing a huge client list. She felt that she was not receiving the support from the WCH partners who did not rank their family department highly within the firm and who were content to hand the responsibility for the running and maintaining of it to the Respondent. The Respondent had come to recognise that she kept saying “yes” to new work and “yes” to clients who were demanding in order to alleviate the pressure that she was putting herself under. In her oral evidence the Respondent said that she believed she would be able to put matters right and accepted that it was her responsibility to do so. She

accepted that she had made a ludicrous decision - one that she would never make again.

42. The Respondent had given her evidence in an open and straightforward manner. She accepted that she had been wrong but she had not been dishonest - rather she had been foolish, misguided and naive. She had made mistakes.
43. At a time when she had been subjected to great pressure of work the Respondent had bowed to client pressure. No client had suffered any loss, but the Respondent had lost her own money that she introduced into client account.
44. The two-part test in Twinsectra -v- Yardley had not been met to the appropriate very high standard.
45. The Law Society had approved the Respondent's current position as a local authority locum and the Respondent hoped that she would be able to take up a permanent position there when the disciplinary proceedings were behind her.

The Tribunal's Findings

46. The Tribunal found all of the allegations, which had been admitted by the Respondent, to have been substantiated. With regard to allegation (e) the Tribunal concluded that the Respondent's actions had been dishonest. In reaching that conclusion the Tribunal applied the tests in Twinsectra -v-Yardley. It considered that any member of the solicitors' profession would regard the payment into and out of client ledgers that do not relate to the particular client transactions they were intended to meet was not an honest course of action on the part of a solicitor. Further, the payment of a substantial sum of money by the Respondent from her own resources into client account to cover a payment properly due to a client was not an honest course of action. The Tribunal considered that any ordinary member of the solicitors' profession would know that that would be the view of other members of the profession.

The Tribunal's Decision and its Reasons

47. Although the Tribunal found the Respondent to have been guilty of dishonesty in acting as she did, the Tribunal did give her credit for giving clear and straightforward oral evidence. The Tribunal accepted that the Respondent had been under extreme pressure of work and acknowledged her perception that she had not had an adequate level of support from her employers.
48. The Tribunal accepted that such pressure led her to make improper payment to Mrs W out of client account. In view of the Respondent's clear intention to put the best interests of her clients first the Tribunal was prepared to accept that the Respondent's behaviour had to some extent been aberrational but considered that such behaviour might have been more easily excused if it had been put right immediately.
49. Once the Respondent had taken her initial foolish step she found herself on a continuing downward slope. The Tribunal could not overlook the fact that the Respondent had created documents, in particular authorisation slips to her employing

firm's accounts department with which she intended to and did mislead the firm's cashiers.

50. It was to the Respondent's credit that she sought to make repayment from her own funds. The Tribunal accepted that the Respondent, although by placing her own monies in client account she was in breach of the Solicitors Accounts Rules, had intended to put right the wrong she had done.
51. The Tribunal noted that the Respondent's partner had been reprimanded by the Law Society in connection with allegations similar to those at (f) and (g). For this reason as these were straightforward breaches of the Solicitors Accounts Rules and involved no element of dishonesty the Tribunal considered it right that the Respondent also should be reprimanded in respect of those allegations.
52. With regard to allegations (a) to (e) whilst the Tribunal had some sympathy with the position in which the Respondent had found herself, the Tribunal found that the Respondent had behaved dishonestly. In order to fulfil its first duty to protect the public and its second duty to protect the good reputation of the solicitors' profession the Tribunal concluded that it would be both appropriate and proportionate to order that the Respondent be struck off the Roll of Solicitors. The Tribunal so ordered. It further ordered that the Respondent should pay the Applicant's costs. The Respondent had accepted liability for the Applicant's costs and had agreed the sum of £4,000. The Tribunal ordered that the costs to be paid by the Respondent were to be fixed in the agreed sum of £4,000.

DATED this 19th day of April 2007
on behalf of the Tribunal

J R C Clitheroe
Chairman