

IN THE MATTER OF DAVID STEPHEN BOOTYMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr I R Woolfe (in the chair)
Mr K Duncan
Mrs V Murray-Chandra

Date of Hearing: 15th March 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 & Coleman, solicitors of 70 Marylebone Lane, London, W1U 2PQ on 5th September 2006 that David Stephen Bootyman of Grimsby, NE Lincolnshire, 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 against the Respondent were that he had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:

- a) that he failed to act in the best interests of his clients and to perform his work to a proper standard in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;
- b) that he misled his clients in his representation of them in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;
- c) that he misled his partners and employees in his conduct of matters on behalf the partnership's clients in breach of Practice Rule 1 of the Solicitors Practice Rules 1990;

- d) that he dishonestly and improperly withdrew client money from his client account and in breach of Rule 22 of the Solicitors Accounts Rules 1998;
- e) that he failed to pay into client account monies he received on behalf of his client in breach of Rule 15 of the Solicitors Accounts Rules 1998;
- f) that he failed to keep accounting records in breach of Rule 32 of the Solicitors Accounts Rules 1998;
- g) that he dishonestly and improperly used his office account to conceal that payments purportedly made in respect of costs were in fact his own money in breach of Rule 15 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 15th March 2007 when Robert Simon Roscoe 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.

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

The Tribunal Orders that the Respondent, David Stephen Bootyman of Grimsby, NE Lincolnshire, 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 £13,987.

The facts are set out in paragraphs 1 to 12 hereunder:

1. The Respondent, born in 1954, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At the material times the Respondent was an equity partner at Malcolm Cooke & Co, solicitors, 2 Town Hall Street, Grimsby, DN31 1HN (“the partnership”). He resigned from the partnership on 20th May 2005 as a result of the matters summarised below coming to light.
3. On 12th May 2005 the Respondent’s partners wrote to The Law Society to inform them that the Respondent had taken clients’ money for his own benefit. The Respondent subsequently accepted that he had done that.
4. On 31st May 2005 an Investigation Officer of The Law Society attended Malcolm Cooke & Co to inspect the partnership’s books of account and other documents. The resulting Report dated 13th October 2005 was before the Tribunal. The Report noted the matters set out below.
5. The Respondent had been assisting a Miss DHW since 1983. Miss DHW was a client of the Respondent’s firm and the daughter of clients of the Respondent’s former principal and, at the relevant time, was both elderly and also assisted by social services because of both her age and limited mental capacity. The Respondent acted for and obtained damages for Miss DHW from the local authority and also acted in

other matters over the years. The Respondent had a friendship with Miss DHW whom he also assisted in his personal capacity.

6. The Respondent collected Miss DHW's pension at her request. He failed to pay that money into client account or to keep a record of the sums received by him. The Respondent paid sums of cash to Miss DHW to enable her to meet her everyday expenses. The cash paid came from both Miss DHW's pension and also from monies held in the partnership's client account. The Respondent failed to keep a proper accounting record of the monies given to Miss DHW or the purpose of such payments.
7. On 10th May 2005 the Respondent admitted to his partners that he had retained £300 for his use. He also accepted that there were no records to show that a total of £1,460, withdrawn between 1997 and 2002 from Miss DHW's account, had been withdrawn for a proper purpose. He accepted that he had failed to record his handling of Miss DHW's money. He accepted that he had failed to act in Miss DHW's best interests.
8. The Respondent acted for a Mr and Mrs D in relation to a conveyancing matter. Following the conclusion of the transaction an estate agent claimed an unpaid fee. The clients refused to pay the claim. The estate agent issued County Court proceedings. The Respondent failed to notify his clients and despite their original instructions paid the claim of £680 from the partnership office account in April 2002 and thus settled the claim without his clients' knowledge or consent.
9. The Respondent paid into office account, ostensibly from his clients, a building society cheque in the sum of £480. In April 2003 he wrote or purported to write to his clients that the claim had been resolved with "no further action". In March 2005 following questions about the outstanding balance of £200 owed by the clients, the Respondent paid £50 into the firm's account telling his employee that he had collected the money from the clients who would pay the balance by instalments. This was not true. The Respondent used his own money and had neither informed his clients (whom he had not seen for over a year), his partners or his employee of the true situation. Letters on the clients' file, purporting to have been sent in 2003 and 2004 to the clients by the Respondent, had never been received by the clients and despite the copies on the file would appear never to have been posted. A file note made by the Respondent and dated 10th March 2005 was also a fiction and designed to mislead. The Respondent admitted his conduct to the Investigation Officer.
10. The Investigation Officer ascertained that on one instance in February 2002 and thirty instances between August 2004 and the Respondent's departure in 2005, the partnership had been obliged to pay stamp duty penalties to the Inland Revenue on conveyancing matters. The total amount involved appeared to be £4,511. The Respondent confirmed that his partners were not aware of the penalties accruing because he would remove the letters from the post before it was formally opened. He accepted that he misled his partners.
11. In addition the Respondent misled his clients Mr and Mrs S in February 2004. Having acted for them in a conveyancing transaction that was exempt from stamp duty, he used his clients' £200 to discharge the penalty, informing the clients that the £200 represented an administrative charge by the Inland Revenue.

12. On 30th June 2005 the Respondent told the Investigation Officer that he was suffering from stress related depression which he said had affected his judgement and ability to cope over a period of time.

The Submissions of the Applicant

13. In relation to Miss DHW the Applicant accepted that she was a friend of the Respondent, indeed her parents had been clients of his principal. The Respondent had accepted that he had collected money as her solicitor and that he should have paid it into client account and kept a record.
14. The Applicant did not allege that the Respondent received or kept the £1,460 inappropriately.
15. The Respondent had made full admissions to the Investigation Officer and also in his written responses to which the Tribunal was referred. The Respondent had not challenged the Investigation Officer's Report. A Civil Evidence Act Notice had been served.
16. The Applicant had served a schedule of costs on the Respondent. The Respondent had written that he was astounded by the level of the Investigation Officer's costs. On 7th March the Applicant had sent a breakdown of the Investigation Officer's time and costs and the Applicant repeated that breakdown for the Tribunal. The Tribunal was asked to note that these matters dated back to 1997 so the investigation had had to cover a long period of time. The Applicant sought an order for costs including those of the Investigation Officer.

The Submissions of the Respondent

17. The Respondent had sent written submissions to the Tribunal dated 12th March 2007 which are summarised below.
18. The Respondent admitted retaining the sum of £300 of Miss DHW's money for his own purposes. The Respondent said that the sum of £1,460 had been withdrawn for the benefit of Miss DHW for the various purposes set out in his response dated 14th November 2005 to the Investigation Officer's Report.
19. The Respondent deeply regretted his misconduct in so far as Miss DHW was concerned in view of his long association with her. He asked the Tribunal to consider the many positive things he had done for her and arranged on her behalf as set out in the documents before the Tribunal. Many of these positive actions had been carried out in his own time. He would regret for the rest of his life his admitted failings relating to Miss DHW.
20. The Respondent asked the Tribunal to note that although the sum of £1,460 had been charged to his drawings in respect of Miss DHW by his former firm, he had prior to this anticipated that he would repay the sum directly to the firm and he did not wish the Tribunal to take the view that no action had been taken with regard to this sum.

21. The Respondent regretted any distress caused to Mr and Mrs D by his conduct of their matter and asked the Tribunal to take into consideration that Mr and Mrs D had not suffered any financial loss as a result of the Respondent's action in settling the County Court claim brought against them. The Respondent also regretted the actions he had taken which misled his partners and in particular the practice manager of his former firm.
22. In relation to the stamp duty matters, the Tribunal was asked to take into consideration that the conveyancing transactions in question had been carried out satisfactorily up to and including completion. The difficulties had arisen post completion and the Tribunal was referred to the details set out in the documentation before it. The Tribunal was asked to take into consideration some of the practical difficulties experienced by the Respondent which caused delay in certain cases. The Respondent accepted that he had not acted properly resulting in penalties being raised by the Inland Revenue. He regretted any upset caused to the clients affected by his failings but asked the Tribunal to note that as far as he could recall none of the clients referred to in Appendix B to the Report had suffered any financial loss as the penalties had been discharged by his former firm.
23. Malcolm Cooke & Co had transferred £2,312.49 from a sum being accumulated for the Respondent in the firm's income tax revenue account to the firm's office account to meet various liabilities and the Respondent submitted that he had therefore made a financial contribution towards the stamp duty penalties that had arisen as a result of his failings.
24. In relation to Mr and Mrs S the Tribunal was referred to the Respondent's response dated 14th November 2005. He regretted his actions in dealing with the stamp duty penalty of £200 that had arisen due to his failure to meet the required time limit and regretted misleading the clients and making a false representation as to the nature of this payment by describing it as an administrative charge by the Inland Revenue. The Tribunal was asked to note that Mr and Mrs S had been reimbursed the £200 and suffered no personal financial loss and that the conveyancing transaction itself was carried out satisfactorily up to and including completion.
25. The Respondent fully accepted that the Tribunal would be very concerned about his professional conduct and hoped that he had conveyed in his statement and in his earlier responses to The Law Society his deep and genuine regret for the actions he had taken. He would have to live with the consequences of his conduct of which he was very ashamed. He asked the Tribunal to take into account the fact that he had readily admitted his failings and misconduct and had fully cooperated with the investigation, the Applicant and the Tribunal.
26. At the time of his interview with The Law Society on 30th June 2005 he had been in very poor health and had been advised to seek a delay in the interview until he was in better health but had declined this advice. He had considered that matters should proceed as quickly as possible for all parties concerned. The Respondent appreciated the consideration that had been shown to him by The Law Society investigators. The Tribunal was also asked to note that the Respondent had no previous disciplinary proceedings record.

27. The Respondent referred the Tribunal to the letter dated 8th March 2007 from the Respondent's general practitioner. The Respondent remained under the care of his doctor and on prescribed medication. He appreciated that health problems were not an excuse for his conduct but hoped that the Tribunal would give some consideration to the points made in the letter in so far as they might have contributed towards his actions and behaviour.
28. The Respondent had been a proud and active member of the Grimsby and Cleethorpes Law Society since 1979, indeed had been president of it in 2004-2005. He had let down the Society and its members by becoming the subject of The Law Society investigation and these proceedings.
29. The Respondent was deeply saddened by the upset he had caused to his family and former colleagues as well as the clients affected.
30. The Respondent had not worked in the profession since 10th May 2005 and did not hold a current practising certificate. The Respondent set out details of his family circumstances and current part time employment outside the profession.
31. The Respondent hoped that the Tribunal would be able to discipline him without striking him off the Roll of Solicitors. He hoped one day if possible to return to work in either the legal profession or a related occupation despite the blemish on his character and reputation that had and would result from the proceedings.
32. The Respondent had seen details of the costs sought by the Applicant. The Respondent had no dispute with the Applicant's legal costs but was astounded by the level of The Law Society's Forensic Investigation costs figure of £11,897.15. He had raised his concern with the Applicant in correspondence.

The Findings of the Tribunal

33. The Tribunal found the allegations to have been substantiated indeed they were not contested.
34. The Respondent had admitted taking £300 of Miss DHW's money for his own use. Although the amount was small this was a dishonest taking of client's money. The client in question was particularly vulnerable. Further the Respondent had misled his partners and their employees and clients. The Tribunal had taken careful note of the matters put forward in mitigation by the Respondent including the letter from his general practitioner. The Respondent had not submitted however that his health problems had been such that he had not been responsible for his actions. Conduct such as this on the part of solicitors damaged the reputation of the profession. It was essential that clients be protected from any future misconduct of this nature and it was right that the Respondent not be permitted to remain in the profession. The Tribunal would order that the Respondent's name be struck off the Roll of Solicitors.
35. In relation to costs, the Respondent had queried the costs of the Forensic Investigation. The Tribunal had been given a breakdown of those costs and was satisfied that it was right that the Respondent be ordered to pay all the costs sought by the Applicant in a fixed sum.

36. The Tribunal Ordered that the Respondent, David Stephen Bootyman of Grimsby, NE Lincolnshire, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,987.

DATED this 21st day of May 2007
on behalf of the Tribunal

I R Woolfe
Chairman