

IN THE MATTER OF STUART ANDREW HOWARD FOTHERINGHAM, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr R J C Potter (in the chair)
Miss N Lucking
Mr D Gilbertson

Date of Hearing: 5th June 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 Paul Robert Milton, solicitor, employed by The Law Society at Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE on 12th October 2006 that Stuart Andrew Howard Fotheringham, solicitor, of 17-21 West Parade, Lincoln, Lincolnshire, LN1 1NW, 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in the following respects:

1. That he did mislead his client Mr W in a claim against Humberside, North Lincolnshire and Lincolnshire Police Authorities by informing him that proceedings had been issued, a trial date set and that prior to the trial a settlement had been agreed in the sum of £15,000 when in fact no proceedings had been issued and no such settlement had been negotiated;
2. That he prepared or caused to be prepared a false Consent Order dated 16th May 2001;
3. That he did mislead his client Mr W in a case against Scunthorpe Hospital/NHS Trust over a period of some six years by informing him that proceedings had been issued, a

trial date had been set, the hospital had admitted liability, Counsel had been instructed and estimated damages at £50,000 and that the hospital had offered £40,000 in settlement when he knew such information to be untrue.

It was alleged that the Respondent had acted dishonestly with respect to allegations 1,2 and 3.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th June 2007 when Paul Robert Milton appeared as the Applicant and the Respondent was represented by David Morgan, solicitor and consultant to RadcliffesLeBrasseur of 5 Great College Street, Westminster, London, SW1P 3SJ.

The evidence before the Tribunal included the admissions of the Respondent. The Respondent gave oral evidence. Mr Hare, Mrs Cohen and Mr Bonass gave oral evidence as to the Respondent's good character. A bundle of references in support of the Respondent was put before the Tribunal.

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

The Tribunal Orders that the Respondent, Stuart Andrew Howard Fotheringham of 17-21 West Parade, Lincoln, Lincolnshire, LN1 1NW, 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 £872.00.

The facts are set out in paragraphs 1-14 hereunder:

1. The Respondent, born in 1951, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a partner in the firm of McKinnells, solicitors of 17-21 West Parade, Lincoln, Lincolnshire, LN1 1NW where he continued to practise.
3. On 25th May 2005 WC, solicitors, representing Mr W, a former client of the Respondent, forwarded to the Consumer Complaints Service a copy of their letter to the senior partner of McKinnells outlining their complaint and allegations against the Respondent.

Allegation 1

4. The first allegation concerned Mr W's instructions to the Respondent in a claim against Humberside, North Lincolnshire and Lincolnshire Police Authorities where Mr W instructed the Respondent to investigate and pursue an appropriate complaint and instigate civil proceedings against the police authorities for being falsely accused of creating a disturbance at and threatening staff at Scunthorpe General Hospital.
5. The Respondent had advised Mr W that, in relation to his case against the police authorities, proceedings had been taken. Only a matter of days before the trial of his claim was supposed to take place against the police authorities, the Respondent informed Mr W that a settlement had been negotiated. Consequently a Consent Order was prepared by the Respondent and Mr W was advised by the Respondent that a

settlement of £15,000 had been achieved plus costs. A copy of the Consent Order dated 16th May 2001 was before the Tribunal.

6. During the course of its investigations into the conduct of the Respondent The Law Society wrote to the Lincolnshire Police on 31st March 2005 enquiring as to the authenticity of any settlement and the Consent Order dated 16th May 2001. The Lincolnshire Police Authority Treasurer and Force Solicitor confirmed in a letter dated 12th April 2006 that there had been no such settlement, that no money had been paid to Mr W or his legal representatives by the police authority.
7. On 6th September 2005 The Law Society raised with the Respondent the allegation that the Respondent had misled Mr W in the claim against Humberside, North Lincolnshire and Lincolnshire Police Authorities by informing him that proceedings had been issued, a trial date set and that prior to the trial a settlement had been agreed in the sum of £15,000 when in fact no proceedings had been issued and no settlement negotiated.
8. In his response dated 20th September 2005 the Respondent admitted that in relation to the police authorities matter no proceedings had ever been issued and that he had misled Mr W as alleged. The Respondent admitted inventing a settlement and paying Mr W £15,000.

Allegation 2

9. In the letter dated 31st March 2005 to the Lincolnshire Police The Law Society enclosed a copy of the Consent Order dated 16th May 2001 signed by the Respondent, enquiring as to whether or not it was genuine.
10. The Force Solicitor and Lincolnshire Police Authority Treasurer responded on 12th April 2006 confirming that the document was not genuine and that no money had ever been paid to Mr W or his legal representatives by the Police Authority. Further, the police confirmed that the signature on the document alongside the heading "Signed for and behalf of the Defendants" was not that of the Force Solicitor for Lincolnshire Police nor was it the signature of any member of the Lincolnshire Police Authority.

Allegation 3

11. The Respondent had been instructed by Mr W regarding his (Mr W's) concerns about alleged clinical negligence relating to his wife's death whilst under the care of Scunthorpe Hospital/NHS Trust, an altercation which occurred in the hospital and further allegedly false accusations by the hospital that Mr W had been threatening and abusive to members of the hospital staff.
12. The Respondent subsequently advised Mr W that proceedings had been issued, that Counsel had been instructed and estimated damages at £50,000 and that the hospital had offered £40,000 by way of settlement.
13. In fact no proceedings had been issued by the Respondent, Counsel had not been instructed nor had a negotiated settlement been proposed.

14. This allegation was outlined in the letter dated 6th September 2005 from The Law Society and the Respondent admitted in his letter dated 20th September 2005 that in relation to the Scunthorpe Hospital Case no proceedings had been issued and that he had misled Mr W as alleged.

The Submissions of the Applicant

15. The Respondent in his statement dated 22nd May 2007 had denied acting dishonestly insofar as there was no intention on his part to benefit from his actions. In the submission of the Applicant lack of an intention to benefit was irrelevant. No reasonable, prudent or honest solicitor would have acted as the Respondent did. He had acted dishonestly by misleading his client, Mr W, and further misleading him by paying £15,000 to him to lend credence to the charade. He had also acted dishonestly by preparing or causing to be prepared a false Consent Order.
16. The Tribunal was referred to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. It was submitted that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent realised that by those standards his conduct was dishonest but he proceeded regardless.
17. The Applicant sought his costs in the agreed sum of £872.

The oral evidence of the Respondent

18. The Respondent confirmed the truth of his statement of 22nd May 2007. He confirmed that he accepted that even though he had made no personal gain from his conduct he had acted dishonestly.
19. The Respondent had racked his brains to think of a logical reason for his actions but could not explain them. He wanted to apologise to his partners, to Mr W and to everyone concerned.
20. The Respondent had himself approached Mr W of his own initiative as he could not stand the situation any longer and felt he had to tell Mr W that he had misled him.

Oral evidence of Richard Graeme Hare

21. Mr Hare confirmed the truth of his statement dated 18th May 2007. Mr Hare had spoken personally to the clients, colleagues and staff who had provided testimonials, except for Mr K whose testimonial post-dated Mr Hare's statement, and had informed them fully of the allegations. Mr O had attended the Tribunal as a client and friend to show his support to the Respondent. Staff of the firm had also come forward to offer testimonials. Many professional colleagues had also offered to attend the hearing. Mr Hare explained that since the 1st May 2005 he had been the managing partner and complaints handling partner of the Respondent's firm. He and the Respondent had been articulated together in the 1970s. Over the last two years there had been four complaints against the Respondent, two of which were without substance. The complaints had been brought to Mr Hare's attention by the Respondent. The two substantiated complaints had been accepted by the Respondent, apologies had been given and compensation paid. They had related to the non-registration of titles.

Oral evidence of Victoria Louise Cohen

22. Mrs Cohen confirmed the truth of her statement dated 18th May 2007.
23. Mrs Cohen had known the Respondent since 1991 when she joined the firm as an articled clerk, becoming a partner in 1998. She had worked closely with the Respondent.
24. The structure of the firm was now very different from how it had been at the time relevant to the allegations. It had then been much smaller and the Respondent as senior partner had also managed the firm and carried out business planning.
25. The Respondent had been very supportive of younger partners or solicitors. His door had always been open and he had always been there for the staff. Miss Cohen thought that as the top of the pyramid the Respondent had felt he had nowhere to go when a problem arose with a client. This was a very sad case.
26. There were now two new partners, one of whom was the managing partner, and file reviews. Chances of anything similar arising in the future were very remote indeed.

Oral evidence of Michael Garton Bonass

27. Mr Bonass confirmed the truth of his statement dated 4th June 2007.
28. Mr Bonass was the former senior partner of the Respondent's firm. He considered that the Respondent was the best solicitor he had ever met and found his judgement to be sound and his advice concise and to the point. In his statement Mr Bonass had written:

"I had great admiration for all the other partners and staff but to me this particular solicitor was very special".

29. The Respondent had been admired by clients, staff, colleagues and other professionals.
30. The Respondent would pass on work where it was not his specialist area and Mr Bonass had racked his brain to think why the Respondent had not passed on this case. The Respondent had acted for the client previously and Mr Bonass thought that the client had relied on the Respondent to deal with the matter and in the client's sad circumstances the Respondent had attempted to do so.

The Submissions on behalf of the Respondent

31. On behalf of the Respondent Mr Morgan clarified that in his statement the Respondent had been trying to say that he had had no dishonest intention of personal gain rather than commenting on the Twinsectra test.
32. This was a very sad case. The Respondent had had an unblemished career.
33. It was accepted that the Respondent put a purported signature on behalf of the defendant on the Consent Order but it was clarified that he had not certified the

Consent Order. The handwritten certification was a certification subsequent to the document being received by The Law Society.

34. The Tribunal was asked to note that the Respondent had blown the whistle on himself. As well as the contrition he had expressed in the statement which he had prepared himself he had apologised in front of the Tribunal.
35. The Respondent was now aged 56. The Tribunal would have read the testimonials and had heard the character witnesses. Mr Bonass's comment that the Respondent was very special was impressive.
36. It was hoped that the Tribunal would feel able to recognise that this was an unusual and peculiar case with special circumstances.
37. There was a need for solicitors to be honest at all times and to act in a way which did not damage confidence in the reputation of the profession. Mrs Cohen had said however that the structure of the firm had changed and that it was very unlikely that any repetition would be possible.
38. Clients often spoke highly of their solicitors. Mr O's letter was compelling. It was however backed up by testimonials from members of the profession including members of other firms who could be viewed as the competition for the Respondent's firm.
39. In such a matter the Tribunal would normally impose a sanction which impacted on a Respondent's practising certificate. In the present case however the Tribunal was asked to consider a suspension rather than a strike off. The Tribunal had to be seen to take a serious view of this matter but these were special circumstances and a special man.

The Findings of the Tribunal

40. The Tribunal found the allegations to have been substantiated indeed they were not contested.
41. This was a tragic case which regrettably portrayed a course of thoroughly dishonest conduct by the Respondent over a three year period. The Respondent had acted as no reasonable, prudent and honest solicitor would have acted. The Tribunal in this regard bore in mind the combined test set out in the case of Twinsectra Ltd v Yardley. It was something of a mystery as to why the Respondent acted as he did and the Tribunal had been led to the conclusion that at the material time the Respondent must have allowed pride to outweigh his normal standards of judgement, thus falling to the level of dishonesty he had.
42. The Tribunal had listened to four character witnesses and had read some 30 impressive testimonials for which the Tribunal was grateful. The Respondent had a previously unblemished record. The Tribunal had given this matter much thought and careful consideration. The Tribunal had heard that it was highly unlikely that there would be a repetition of the dishonest conduct. The Tribunal however had a duty to protect the reputation of the profession and had considered the comments of the then Master of the Rolls in Bolton -v- The Law Society 1994 1 WLR 512:

"Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learnt his lesson and will not offend again.....All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.....The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

Notwithstanding the contrition shown by the Respondent at an early opportunity the Tribunal rightly had to mark this sort of dishonest behaviour by imposing the ultimate sanction. It was a sanction which the Tribunal anticipated the Respondent, if he were able to exercise judgement in the case objectively, would entirely understand.

43. The Tribunal Ordered that that the Respondent, Stuart Andrew Howard Fotheringham of 17-21 West Parade, Lincoln, Lincolnshire, LN1 1NW, 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 £872.00.

Dated this 3rd day of August 2007

R. J. C. Potter
Chairman