

IN THE MATTER OF JEREMY CHARLES BARLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D Green (in the chair)
Mr E Richards
Mr P Wyatt

Date of Hearing: 27th September 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 David Elwyn Barton, solicitor, of 5 Romney Place, Maidstone, Kent, ME15 6LE on 31st October 2006 that Jeremy Charles Barley of Hoe Street, Walthamstow, London, E17 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.

On 6th July 2007 the Applicant made a supplementary statement including further allegations.

The allegations set out below are those contained in the original and supplementary statements.

1. The allegations were that the Respondent breached the Solicitors Accounts Rules in each of the following respects namely:
 - (a) he failed to properly deal with monies paid to him in respect of unpaid professional disbursements contrary to Rules 19(1)(b)(ii), 21(1)(b)(ii) and 21(2)(c) of the Solicitors Accounts Rules 1998;

- (b) he failed to remedy breaches of the said Accounts Rules promptly upon discovery, contrary to Rule 7 thereof;
2. The Respondent had been guilty of conduct unbefitting a solicitor in each of the following respects:
- (a) he failed to reply to communications from Edward Fail Bradshaw Waterson solicitors (Edward Fail);
 - (b) he failed to account to Edward Fail for costs due to them. In so doing he was dishonest;
 - (c) he failed to deliver his Accountant's Report for the period ending 5th October 2006;
 - (d) he failed to reply to correspondence from the Society.

The Applicant put the allegations against the Respondent in connection with allegation 2 (a)-(d) inclusive on the basis that the Respondent had been dishonest.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when David Elywn Barton appeared as the Applicant and the Respondent was represented by Andrew Blatt, solicitor of Murdochs, solicitors of Wanstead.

The evidence before the Tribunal included the admissions of all of the allegations by the Respondent save that he denied that he had been dishonest. The Respondent gave oral evidence. A copy of the Tribunal's findings relating to Mr Strong and written testimonials in support of the Respondent were handed up at the hearing.

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

The Tribunal Orders that the Respondent, Jeremy Charles Barley of Hoe Street, Walthamstow, London, E17, 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 £9,523.73

The facts are set out in paragraphs 1 - 15 hereunder:

1. The Respondent, born in 1949, was admitted as a solicitor in 1974. His name remained on the Roll of Solicitors. At the material times the Respondent practised alone under the style of Ronald Prior & Co at Walthamstow, London.
2. On 2nd August 2005 an Investigation Officer of The Law Society ("the IO") began an inspection of the Respondent's books of account and other documents. The IO prepared a Report dated 14th September 2005 which was before the Tribunal.
3. The Respondent's books of account were not in compliance with the Solicitors Accounts Rules.

4. A list of liabilities to clients as at 30th June 2005 was produced for inspection which totalled £23,960.76. There were liabilities to clients not shown by the books amounting to £44,331.91. A comparison of the total of the list, together with liabilities not shown by the books, with cash held in client bank account at that date, after allowance for uncleared items, showed the following position:

Liabilities to clients shown by the books	£23,960.76
Liabilities to clients not shown by the books	<u>44,331.91</u>
	£68,292.67
Cash available	<u>20,403.61</u>
Cash shortage	<u>£47,889.06</u>

The cause of the cash shortage was as follows:

- (i) Funds in respect of unpaid professional disbursements received from the Legal Services Commission lodged in office bank account which remained unpaid beyond 14 days of receipt
- | | |
|--|-------------------|
| | £44,331.91 |
| | <u>3,557.15</u> |
| | <u>£47,889.06</u> |
5. On 16th August 2005 Mr Barley and his bookkeeper told the IO that a total of £12,136.96 had been paid from office bank account in respect of the disbursements after 30th June 2005. Mr Barley said that he had been aware of the disbursements. Because of his overdraft limit he was unable to pay the experts concerned. He and his bookkeeper said that they hoped to pay the remaining unpaid disbursements during September 2005.
6. A review of the firm's office bank account and client matter files showed that funds received from the Legal Services Commission in respect of professional disbursements totalling £44,331.91 had been lodged in office bank account as at 30th June 2005. None of the disbursements had been paid or the monies transferred to client bank account.
7. The cash shortage of £44,331.91 represented 37 unpaid disbursements varying in amount from £ 40 to £4,898.25 which arose during the period 14th December 2001 to 22nd June 2005.
8. On 9th November 2006 Edward Fail Solicitors complained to The Law Society that they had been unable to elicit a response from the Respondent to communications concerning costs due to them from him.
9. Edward Fail had had the conduct of a personal injury action for a legally aided claimant. The case had been transferred to the Respondent who concluded it. He claimed costs due both to him and Edward Fail from the Legal Services Commission. The costs were paid by the Legal Services Commission in Spring 2006. The Respondent received £4,953.23 which was due to Edward Fail. The Solicitors Accounts Rules required the Respondent to pay it within two working days of receipt,

or to transfer an equivalent sum into client account. The Respondent retained the money in his office account.

10. When the Respondent was telephoned by Edward Fail on 6th April 2006 he stated that he believed he had received their money from the Legal Services Commission and that he should be in a position to pay the following week.
11. The Respondent did not respond to letters from Edward Fail dated 7th August and 2nd October 2006.
12. The Law Society wrote to the Respondent on 8th March 2007 seeking his explanation. On 23rd March the Respondent telephoned and said that he was in the process of closing down his firm. He said that he had not had time to go through everything and told the Society that his response would be received by 30th March.
13. On 30th March 2007 The Law Society spoke with the Respondent who agreed that the monies were due to Edward Fail. He said he thought the Legal Services Commission had placed him in funds sometime after March 2006. He said that he had been declared bankrupt within the previous few days and expressed his determination to sort the difficulty out.
14. The Respondent wrote to The Law Society on 3rd April 2007 confirming his bankruptcy and the amount due to Edward Fail. It was apparent from that letter that the Respondent was not in a position to account for the money due because it had been retained in office account and had been lost in his bankruptcy.
15. On 11th October 2006, 18th January and 13th February 2007 The Law Society wrote to the Respondent with a view to obtaining his Accountant's Report for the period ended 5th October 2006. The Respondent replied to none of the letters. The Report remained outstanding.

The Submissions of the Applicant

16. The Respondent accepted the allegations, save allegation 2(b) which the Applicant put as an allegation of dishonesty. The Respondent accepted that he had not accounted to Edward Fail for the costs. He denied that he had been dishonest. The issue in that respect was the Respondent's state of mind. Allegation 2(b) was put as one of dishonesty because the Respondent knew in March or April 2006 that he had received money which belonged to Edward Fail. He had said that his accounts department had problems. He knew of his obligation to account. The Respondent ignored subsequent correspondence from Edward Fail and when he received the letter from The Law Society asking for his explanation he did not then take immediate steps to account which would have been the obvious and honest step to have taken. The money was retained by the Respondent in his office account and was lost as the result of his bankruptcy as a result of a series of conscious decisions made by the Respondent that were consistent only with dishonesty.

The Submissions of the Respondent

17. The Respondent admitted the allegations and it was confirmed that he denied that he had been dishonest in relation to allegation 2(b).
18. The Respondent disputed the allegation of dishonesty which depended largely upon the interpretation of the events. It had never been in the Respondent's character to act in a dishonest way. He accepted that he had been in breach of the rules of conduct but such a finding by the Tribunal would mean that every time a solicitor was knowingly in breach of a professional rule of conduct he would be found to be dishonest.
19. In practical terms the Respondent's practice had been in a state of meltdown. The Respondent's failure to account was symptomatic of the problems suffered by the practice rather than any deliberate failure. An FIO had inspected the Respondent's firm in 2004 and 2005. On both occasions similar breaches where a number of disbursements had been outstanding and the money had been held in office account had been found but no action had been taken. The Respondent had remortgaged his home and had paid all of the outstanding disbursements in 2004. In 2005 he had been notified by his bookkeeper that there were some disbursements improperly retained in office account and he had been surprised and dismayed to discover following the FIO's inspection that the sum involved was in the region of £40,000. He knew that that meant that he had to pay £40,000 but he was not in a position to do so.
20. The Applicant had suggested that the Respondent had deliberately not paid Edward Fail. One of the difficulties suffered by the Respondent had been that his former partner, Richard Charles Strong, had been struck off the Roll in February 2007. That gentleman had been struck off for writing a letter to The Law Society which he purported had been signed by a principal in his firm without the knowledge of that principal and that he misrepresented the progress of matters he was dealing with both to his principal and his clients. After his leaving the firm, a trail of disaster had been uncovered. That gentleman had hidden files and had behaved in a way that had caused the firm great difficulty.
21. After the first inspection the shortfall had been fully replaced. The monies obtained on mortgage paid off the shortfall and some was used to recapitalise the practice. The Respondent took all responsibility for what had happened. He received a Law Society internal reprimand. There was no allegation of dishonesty made against him.
22. Following the second inspection the Respondent had been shocked to discover the significant shortfall. Again, he arranged re-financing and the shortfall was fully replaced.
23. With regard to the Edward Fail costs, there had been some dispute as to the actual amount due and payable to that firm. The Respondent had tried to calculate the right amount. The Applicant had implied that the Respondent had done nothing. That was not so. The Respondent had made telephone calls and genuine attempts to try to resolve the matter.
24. The Respondent was 58 years of age and had been admitted as a solicitor in 1974. When he joined the firm of Prior & Co in 1975 it had been a reasonably profitable

business with three partners and three offices. It undertook a mixture of work including legal aid.

25. The Respondent found himself in a downward spiralling situation in 2001. The problems caused by Mr Strong had been the tip of the iceberg. That gentleman had lied to the Respondent and to other solicitors. As a result of his actions the firm had faced a series of significant negligence claims. It fell to the Respondent to sort out these matters. As a result of the negligence claims the firm's indemnity insurance premium had risen from £12,000 per annum to £110,000 per annum. That large increase had a significant effect on how the practice was run.
26. That was one of several events which led to the demise of Prior & Co. Several of the firm's staff had wanted to expand and take over the criminal part of the practice. The Respondent arranged to set up another office in Walthamstow which ran making a marginal profit. The staff then wanted to take it over. The Respondent decided to sack those staff and to close the Walthamstow office. He was distressed at their lack of loyalty. Taking this step cost him a large sum of money.
27. At about the same time the Respondent engaged a bookkeeper. The firm's reporting accountants had assisted the Respondent to find a suitable person. In about 2001 the firm's annual Accountant's Report was qualified. It was clear that the bookkeeper was not doing his job properly. The Respondent had come to accept that he should have dismissed the bookkeeper at that time and found a replacement. Replacements were difficult to find and he decided to soldier on with the current bookkeeper.
28. Because of the difficulties faced by the firm, cashflow problems were encountered.
29. Problems caused by the failure of the bookkeeper to carry out his work properly included the fact that the bookkeeper did not write up the books properly; he did not allocate composite BACS payments from the Legal Services Commission to individual clients and he was found to have been "robbing Peter to pay Paul". It was discovered that it had been the bookkeeper's practice to pay experts instructed by the firm out of the pot of clients' money held by the firm regardless of which client such payment related to.
30. The Respondent accepted that he should have taken an active role but he had at the time been extremely busy with client work in the field of his specialisation, namely that of child care.
31. The Respondent came fully to realise the bookkeeper's failures after the first IO's inspection in 2004. He was eventually dismissed in December 2006 after the second IO's visit which made it clear that the bookkeeper's employment could not continue.
32. The dismissal of the bookkeeper itself caused many problems. The Respondent engaged the services of a number of consultants but the books were found to be in such a mess that it proved an impossible task to write them up properly.
33. In addition to these difficulties, the Legal Aid Board carried out an audit which resulted in the termination of the Legal Services Commission contract. As a result a recoupment claim was made by The Legal Services Commission against the

Respondent in excess of £1,000,000. That claim went back to matters dealt with as long ago as 1976. It was the Respondent's view that that was an unsustainable figure and the Legal Services Commission had never established that claim truthfully and accurately to reflect the position.

34. The Respondent was of the opinion that the Legal Services Commission had got things completely wrong and he hoped to appeal against their decision. After taking advice the Respondent decided that the proper course would be to close the practice on a voluntary basis. When the practice was closed a modest balance remained on client account which had to be resolved. The Law Society was asked to make a partial intervention to deal with the balance held on client account but by mistake it made a full intervention. The Respondent's legal representative confirmed that he himself had spoken to a caseworker at The Law Society who had confirmed that the full intervention had been implemented by mistake.
35. On a personal level the Respondent had in mid 2006 been diagnosed as suffering from diabetes.
36. The situation was really that the Respondent had been a victim of his practice. He should have acted more robustly and he had come to accept that with hindsight.
37. The Respondent was recognised as being a good and competent solicitor but he accepted that he was not a good manager and had proved not to be a good businessman.
38. It was the Respondent's position that he had at all times concentrated on his clients' work. He had made no deliberate attempt to keep Edward Fail's money in his firm's office account for his own benefit.
39. The Tribunal was invited to regard the Respondent's failure to pay monies to Edward Fail as the failure of a pressurised man who was not enjoying good health rather than any deliberate attempt to retain monies for the benefit of his firm.

The Findings of the Tribunal

40. The Tribunal found all of the allegations that were not contested to have been substantiated. The Tribunal also found that with regard to allegation 2(b) the Respondent had acted dishonestly. The Tribunal reached that conclusion because the Respondent's position clearly was that he simply left the bookkeeping function and compliance with the Solicitors Accounts Rules to an employee having been put on notice of the incompetence of that employee by the findings of two Forensic Investigation Officers of The Law Society at two inspections of the firm's books of account. Because the Respondent had not "grasped the nettle" and made sure that his accounts were properly in order, the Tribunal concluded that he neither knew nor cared whether money that should not have been in office account was in fact in office account and in accordance with the decision of the court in the appeal from a decision of the Tribunal by Mr Bultitude that did amount to dishonesty.

The Mitigation of the Respondent

41. It was said that little could be added in mitigation as the background to what had occurred did amount to the Respondent's mitigation.
42. The Tribunal was invited to take into account the written testimonials in support of the Respondent which spoke in glowing terms of the excellence of his professional work particularly in the difficult field of child care and generally of his integrity and competence. The Respondent had not deliberately stolen client money. What had happened had arisen from what was a complete and utter mess at the firm. It was hoped the Tribunal would find that the Respondent was not a robust businessman or manager but rather he was the victim of others.
43. The hope was expressed that the Tribunal would not in all of the circumstances of this case consider it necessary to order that the Respondent be struck off the Roll of Solicitors. He very much hoped that he could continue to practise in his chosen field where he had a large measure of experience and competence and did this important work for a vulnerable clientele. The Respondent accepted that should he be permitted to continue to practise any practising certificate issued to him would be likely to be subject to stringent conditions and he was fully prepared to accept that.
44. The Respondent agreed that it would be right that he should pay the costs of and incidental to the application and enquiry and the Respondent had agreed those costs with the Applicant.

The Tribunal's Decision

45. The Tribunal gave the Respondent credit for his admissions, the esteem in which he was held by those conducting professional work with him and recognised the important nature of that work. The Tribunal accepted that the Respondent had encountered a very difficult time. He had been badly let down by work colleagues and/or employees, had used a great deal of his own money to try to salvage the situation and had suffered ill health. However the Tribunal did find that the Respondent's "not knowing or caring" amounted to dishonesty. The Tribunal mindful of its duty not only to protect the public but also to safeguard the good reputation of the solicitor's profession, was reminded that the perception of the public was of great importance and members of the public were entitled to expect that a solicitor might be trusted to the ends of the earth. The Tribunal concluded that it would be both appropriate and proportionate to Order that the Respondent be struck off the Roll of Solicitors. He had very properly agreed to bear the Applicant's costs and had agreed the quantum of such costs. The Tribunal therefore Ordered the Respondent to pay the Applicant's costs fixed in the agreed sum of £9,523.73 inclusive of the Investigation Officer's costs, disbursements and VAT.

Dated this 7th day of January 2008
On behalf of the Tribunal

D. Green
Chairman