

IN THE MATTER OF YUSEF ROBERT CHARLES NODEN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J P Davies
Lady Bonham Carter

Date of Hearing: 19th April 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 Margaret Eleanor Bromley, solicitor of TLT Solicitors, One Redcliff Street, Bristol, BS1 6TP on 31st October 2006 that Yusef Robert Charles Noden of St Albans, Hertfordshire, 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:-

1. The Respondent failed to comply with the Solicitors Accounts Rules 1998 in that:-
 - (i) He failed within 28 days of submitting a report to the Legal Services Commission either to pay any unpaid professional disbursements or to transfer to a client account a sum equivalent to the amount of any unpaid professional disbursements in breach of Rule 21(2)(C);
 - (ii) He withdrew money from client account other than in accordance with Rule 22 (1);
2. He was guilty of conduct unbecoming a solicitor in that he used money paid to him by the Legal Services Commission in respect of Counsels' fees for his own purposes.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19th April 2007 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent both as to the facts and the allegations.

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

The Tribunal Orders that the Respondent Yusef Robert Charles Noden of St Albans, Hertfordshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of April 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.

The facts are set out in paragraphs 1 to 32 hereunder:-

1. The Respondent, born in 1963, was admitted as a solicitor in 1987 and his name remained on the Roll of Solicitors. At all material times the Respondent practised on his own account under the style of Noden & Co at 326 Kensal Road, London, W10 5BZ. The Law Society intervened into the Respondent's firm on 9th February 2006. All of the Respondent's staff had left the firm prior to the intervention. The intervention agents reported that despite those difficult circumstances the Respondent's conduct of the intervention had been helpful and supportive. He displayed a proper concern for the interests of his clients.
2. A Forensic Investigation Officer of the Law Society (the FIO) commenced an inspection of the Respondent's books of account on 20th December 2005. The FIO's Report was before the Tribunal. That Report revealed the following matters.
3. On 1st February 2005 the Respondent's client bank account had been debited with £27,866.96 in respect of "PAYE" and National Insurance. On 19th May 2005 a transfer of the same amount was made from the firm's office bank account to the client bank account to replace that amount incorrectly withdrawn. When interviewed by the FIO on 4th April 2006 the Respondent said that the withdrawal had been made in error by his finance director.
4. In a letter dated 21st May 2006 to the Law Society, the Respondent acknowledged that the breaches had occurred and stated "I take full and personal responsibility for those breaches, as the accountable sole practitioner of Noden & Co". He expressed regret that the breaches had occurred. The Respondent went on to say that the practice had sufficient funds to cover the "PAYE" and National Insurance and that "it was an honest error by the finance director".
5. The Respondent's firm undertook only immigration work, which was funded by the Legal Services Commission (the LSC).
6. The firm received standard monthly payments from the LSC under the Civil Legal Aid contracting arrangements. The firm was therefore subject to the provisions of Rule 21(2) in respect of those payments.

7. From October 2005 the Respondent's firm received monthly payments of either £150,000 or 80% of the value of the work claimed, whichever was the greater.
8. The procedure for dealing with the Legal Aid cases was as follows:-
 - (a) Each month the firm prepared a spreadsheet report listing ongoing cases and giving details, including date opened, time profit costs, disbursements and Counsels' fees.
 - (b) That report was sent electronically to the LSC shortly after the end of the month.
 - (c) The firm maintained computerised ledger cards in respect of each client. On receipt of Counsel's fee note, a posting was made to record the amount of Counsel's fees in the disbursement column.
 - (d) On sending the monthly bill to the LSC, postings were made in the office column in the total amount of Counsel's fees, disbursements and profit costs. Transfers were then made from the LSC account to the office account to clear those items.
 - (e) The firm also maintained a nominal ledger in respect of each Counsel, which recorded details of barristers' fees that had been billed to the firm and of payments made to barristers.

9. The following four client cases were placed before the Tribunal.

Mr H

10. The firm acted for Mr H in his claim for asylum. In May 2005 the firm billed the LSC profit costs of £298.81, disbursements of £340.75 and Counsels' fees of £1,240.44. The actual Counsels' fees incurred comprised fees totalling £780.73.
11. On the relevant client ledger the Counsels' fees were posted to the disbursement column. When the May billing was done at the LSC, postings were made to the office account in the sum of £1,650.75 plus VAT of £229.25 comprising a total of £1,880. On the same date a transfer was made from the LSC account to office account of £1,880.
12. Pursuant to Rule 21, the Respondent should within 28 days of sending the report to the LSC, either have paid Counsels' fees or have transferred an amount equivalent to Counsels' fees to the client ledger. There were no entries at all in the client column of this ledger. There were no postings in the nominal ledger for each Counsel to show payment of Counsel's fees.
13. Landmark Chambers confirmed that as at 11th April 2006 £780.73 fees and VAT remained outstanding.

Mr A

14. The firm acted for Mr A in his claim for asylum.
15. In June 2005 the firm billed the LSC profit costs of £436.63, disbursements of £304.90 and Counsel's fees of £1,085.11.
16. On the relevant client ledger the Counsel's fees were posted to the disbursement column. When the June billing was done to the LSC, postings were made to the office account in the sum of £1,541.90 plus VAT of £245.86, a total of £1,787.76. A second posting was made on the same date in the same amounts, making a total balance of £3,575.51. On 30th June 2005 a transfer was made from the LSC account to office account in the sum of £3,575.51.
17. Pursuant to Rule 21 the Respondent should within 21 days of sending the report to the LSC, either have paid Counsel's fees or have transferred an amount equivalent to Counsel's fees to the client ledger. There were no entries at all in the client column of this ledger. There were no postings in the nominal ledger for the Counsel concerned to show payment of his fees.
18. Mitre House Chambers confirmed that as at 19th April 2006 the fees of £1,085.11 remained outstanding.

Mr MH

19. The firm acted for Mr MH in his claim for asylum. In July 2005 the firm billed the LSC profit costs of £1,025.78, disbursements of £368.20 and Counsel's fees of £411.25, a total of £1,805.23.
20. The relevant client ledger recorded that Counsel's fees were posted to the disbursement column on 22nd July 2005. When the July billing was done to the LSC, postings were made to the office account column of the ledger in the sum of £1,591.20 plus VAT of £214.03, a total of £1,805.23. A transfer was made from the LSC to office account on 30th September 2005 in the sum of £1,805.23.
21. Pursuant to Rule 21 the Respondent should within 28 days of sending the Report to the LSC, either have paid Counsel's fees or have transferred an amount equivalent to Counsel's fees to the client ledger. There were no entries at all in the client column of this ledger. There were no postings in the nominal ledger for the Counsel concerned to show payment of his fees.
22. 9 Kings Bench Walk confirmed that as at 11th April 2006 those Counsel's fees were still outstanding.

Mr HH

23. The firm acted for Mr HH in his claim for asylum. In August 2005, the firm billed the LSC profit costs of £1,192.84, disbursements of £237.10 and Counsel's fees of £667.17, a total of £2,097.11.

24. On the relevant client ledger, the Counsel's fees were posted to the disbursement column. In August when billing was done to the LSC, postings were made in the sum of £1,997.74 plus VAT of £99.37, a total of £2,097.11.
25. Pursuant to Rule 21, the Respondent should within 28 days of sending the report to the LSC either have paid Counsel's fees or have transferred an amount equivalent to Counsel's fees to the client ledger. There were no entries at all in the client column of this ledger. There were no postings in the nominal ledger for Counsel concerned to show payment of his fees.
26. Chambers at 18 St John Street confirmed that as at 18th April 2006 those fees remained outstanding.
27. The FIO established that during the five month period May to September 2005, £65,718.89 had not been paid to Counsel by 30th November 2005 and equivalent funds had not been lodged in client bank account at that date. Counsel agreed that at least £35,016.30 remained owing.
28. The monthly billings to the LSC for October, November and December 2005 included a figure of £31,893.09 where Counsels' fees had been allocated to the LSC monthly payment.
29. In his letter of 21st May 2006 to the Law Society, the Respondent admitted that he had breached Rule 21. He suggested that there was a contradiction between advice from the LSC in the General Civil Contract and Rule 21.
30. The FIO made reference to unusual office account transactions. Over the period April 2005 to January 2006 a total of £68,269.28 was withdrawn from the firm's office account by way of cash cheques. Other unusual payments included a standing order of £21,500 to multiple beneficiaries on 21st October 2005
31. Claims had been made on the Law Society's Compensation Fund.
32. The Respondent explained that a large volume of cash was required to be dispensed to his often destitute clients, for travelling expenses. This money was properly claimed from the LSC. The reference to "standing orders" was an error by the Respondent's bank - this sum of £21,500 was made up of two BACS payments. The first payment was for rent and the second payment was for postage related expenses.

The Submissions of the Applicant

33. The Respondent had admitted both the facts and the allegations. No accusation of dishonesty had been made against the Respondent and the alleged misuse of client money was the direct result of the breach of Rule 21.
34. The Applicant sought inclusive costs of £11,157.63. The Respondent did not agree. It was his view that the liability for costs arose prior to his bankruptcy, from which he was discharged on 14th March 2007. In the submission of the Applicant the liability for costs arose on the date of the hearing when the Tribunal would make its order.

The Submissions of the Respondent

35. The Respondent could not afford the cost of representation. He had been discharged from bankruptcy on 14th March 2007. At the time of the hearing he was employed as a development manager at a small West London charitable trust three days each week at a modest salary, and had secured some freelance work. His income was used to pay his living costs and to maintain his two children
36. In many cases the Respondent's clients were travelling long distances and the cost of travel was high. At the time of the intervention there were 2,000 open files for clients. The firm was required to pay clients' travel costs and the volume of cash required to service the clients was large at any given time. This explained the use of cash cheques. The requirement for immediate payment to, often, destitute clients had an adverse effect on the firm's cashflow.
37. Those expenses were properly recoverable from the LSC when the firm's claim for costs was being submitted.
38. At the date of the intervention, work in progress on the firm's files stood at approximately £1.1million. That work in progress included disbursements which might or might not now be the subject of claims on the Compensation Fund. They should, properly, be claimed from the LSC. That matter lay in the hands of the Respondent's Trustee in Bankruptcy.
39. The Respondent told the Tribunal that refugee law was his passion and the area in which he had expertise. He hoped that he would be able to return to the practice of the law in that field.
40. The Respondent had worked closely with the Legal Services Commission. His firm provided an excellent service. The firm had had 55 members of staff and had achieved a £2million turnover. He had been shocked by the decision of the LSC to determine his contract and he found it difficult not to be very angry with the LSC.
41. The Respondent invited the Tribunal to give due weight to the written references which had been given in his support. They spoke highly of his competence and integrity.

The Findings of the Tribunal

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

The Decision of the Tribunal and its Reasons

43. The gravamen of the Respondent's breaches was that he had not treated payments received from the Legal Services Commission as he was required to do by Rule 21. He had in effect treated money paid to him for the settlement of disbursements as if it was his own money and had not afforded it the protection of being transferred to client account if not utilised to pay the disbursements concerned. He had not therefore treated money that was in the nature of clients' money in the appropriate

way. That was, of course, a serious breach. The seriousness of that breach is amply demonstrated by the fact that although the LSC had passed money for Counsels' fees to the Respondent, those fees had not in fact been settled at a time when the Law Society had intervened into the Respondent's firm and he had been adjudicated bankrupt.

44. The Tribunal recognised that the overall financial situation was far from clear. Although there had been claims on the Compensation Fund it might well be that substantial sums of money due from the LSC might successfully be claimed. It was the Tribunal's conclusion that there were a number of issues which remained to be resolved and it would be both proportionate and appropriate to order that the Respondent be suspended from practice for an indefinite period of time, pointing out that an application for the determination of that indefinite period of suspension would be unlikely to succeed unless the Respondent could demonstrate that the financial uncertainties had been resolved and could provide satisfactory explanations of any other relevant matters concerning the conduct of the firm including clarification as to whether the claims made on the Law Society's Compensation Fund at the date of the hearing reflected any true or actual loss of money.
45. The Tribunal considered it right that the Respondent should pay the Applicant's costs. The Applicant had provided a costs schedule to the Tribunal and it concluded that her claim for costs was entirely reasonable and in order to save the expenditure of further time and money on a detailed assessment the Tribunal ordered the Respondent to pay the Applicant's costs fixed in the sum of £11,000, being slightly less than the figure sought by the Applicant.

DATED this 25th day of May 2007
on behalf of the Tribunal

A G Ground
Chairman