

IN THE MATTER OF COLIN COOK, 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 Jonathan Richard Goodwin, solicitor advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 7th December 2006 that Colin Cook, solicitor of Ashby de la Zouch, Leicestershire, 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 unbecoming a solicitor in each of the following particulars, namely that:-

- (i) he employed and/or remunerated in connection with his practice as a solicitor a former solicitor whose name had been struck off the Roll of Solicitors, without the prior written consent of the Law Society in breach of Section 41 of the Solicitors Act 1974 (as amended);
- (ii) he failed to keep accounts properly written up in accordance with Rule 32 of the Solicitors Accounts Rules 1998;
- (iii) contrary to Rule 32(7) of the Solicitors Accounts Rules 1998 he failed to carry out the required reconciliations;

- (iv) he failed to disclose material information to his professional indemnity insurers in relation to the status of and position of Mr Randall within his practice and/or he made a representation to his professional indemnity insurers which was misleading and/or inaccurate contrary to Rule 1 of the Solicitors Practice Rules 1990;
- (v) he failed and/or delayed in the delivery of an Accountant's Report for the period ending 31st August 2005 (due for delivery on or before 28th February 2006) contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.
- (vi) he failed and/or delayed in replying to correspondence from the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th June 2007 when Jonathan Richard Goodwin 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 to allegations (ii), (iii) and (v).

Prior to the commencement of the hearing the Applicant gave the Tribunal details of service of the proceedings on the Respondent. The Tribunal was satisfied by reference to the submissions of the Applicant and the correspondence received from the Respondent that the proceedings had been duly served on the Respondent, that he was aware of the hearing date and that it was right to proceed in his absence.

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

The Tribunal Orders that the Respondent Colin Cook of Ashby De La Zouch, Leicestershire, 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 £11,750.

[Note: the correct address of the Respondent is 25 Pithiviers Close]

The facts are set out in paragraphs 1 to 22 hereunder:-

1. The Respondent, born in 1967, was admitted as a solicitor in 1994 and his name remained on the Roll of Solicitors.
2. At all relevant times the Respondent carried on practice on his own account under the style of Cooks Solicitors from offices at 1st Floor, 16 West Walk, Leicester, Leicestershire, LE1 7NA.

Accounts Rules breaches - allegations (ii) and (iii)

3. The Forensic Investigation Unit of the Law Society carried out an inspection of the Respondent's books of account commencing on 31st July 2003 and produced a Report dated 6th January 2004. The Report noted the matters set out at paragraphs 4 to 20 below.
4. The books of account did not comply with the Solicitors Accounts Rules 1998.

5. At the commencement of the inspection no clients' ledgers were produced, no reconciliation statement was produced showing a comparison between the balance held on the clients' cash account to that shown on the bank statements of client bank accounts and the total of the client liabilities to the clients' cash account, and further no list of client matter balances was produced.
6. The Investigation Officer returned on 1st August 2003 to continue the inspection but again no reconciliations were produced in relation to clients' monies held in the general client account, albeit reconciliations were produced for the client money held in the designated client account. Further, no reconciliation statement was produced showing a comparison between the balance held on the client cash account and that shown on the bank statements of client bank account, nor between the total of the client liabilities and the clients' cash account and no list of client matter balances was produced.
7. On 10th December 2003 the Investigation Officer returned to continue the inspection but again no reconciliation statement was produced showing a comparison between the balance held on the clients' cash account and that shown on the bank statements of client bank accounts nor between the total of the clients' liabilities and the clients' cash account and no list of client matter balances was produced.
8. The Respondent's explanation together with that of his accountant, Mr D, was set out in the Report.
9. Mr D said that the Respondent had received advice that he should maintain a client ledger for the one client of the firm but Mr D had chosen not to do so as it was a small business. Mr D said that he had been preparing the clients' account cashbook on a quarterly basis and similarly that the reconciliations of the client account cashbook were prepared on a quarterly basis. The Respondent said that he had not told Mr D to write up the books of account on a quarterly basis. He said that although no reconciliation statements had been prepared Mr D had assured him that the comparisons between the balances on the clients' cash account, clients' matters and client bank account had been carried out.

Allegation (i) - breach of section 41

10. On 2nd October 2001 Mr Kevin John Randall was struck off the Roll of Solicitors by the Tribunal.
11. At a meeting on 11th December 2003 Mr Randall indicated to the Investigation Officer that C & V Management Services Limited ("C&V ") had employed him since April 2002 to negotiate costs on behalf of insurers. Mr Randall indicated that whilst C&V was his employer, he was seconded on a full time basis to Cooks Solicitors dealing with the same costs negotiating work but supervised by The Respondent. Mr Randall indicated he was aware that he could not be employed by a firm of solicitors without the written consent of the Law Society, but maintained he was employed only by C&V and was not employed by the firm in "any shape or form".

12. At a meeting held on 12th December 2003 the Respondent indicated to the Investigation Officer that in or around May or June 2002 Mr Randall had informed him that he had been struck off the Roll of Solicitors and had explained to him the circumstances which led to the striking off order. The Respondent explained that he had spoken to the Professional Ethics Department of the Law Society and had explained the working arrangements with his client C&V and Mr Randall. The Respondent explained that C&V was his only client, Mr Randall was C&V's employee, C&V paid Mr Randall his wages, Mr Randall was seconded to the Respondent's firm to negotiate costs for defendant insurers and that the Respondent supervised Mr Randall's work. The Respondent asserted that the person he spoke to in Professional Ethics informed him it was not necessary for him to obtain the written consent of the Law Society in relation to the work to be done by Mr Randall as he was not being employed or remunerated by the firm. The Respondent did not keep a note of the conversation nor did he obtain written verification of the advice. The Respondent confirmed that Mr Randall had been on secondment since September 2002.
13. There was before the Tribunal a copy of the invoice dated 24th February 2004 from C&V to the Respondent's practice in respect of charges for salaried staff on secondment for the period September 2003 to February 2004 in the sum of £114,356.83. A second invoice from C&V to the Respondent's practice set out charges for salaried staff on secondment in the period 22nd February to 21st March 2004 in the sum of £20,948.06.

Allegation (iv)

14. During the course of the inspection the Respondent produced to the Investigation Officer his indemnity insurance certificates for the years 2002/2003 and 2003/2004 together with the completed proposal forms in relation to each. The Respondent confirmed that he had completed and signed both proposal forms and that he had seen them before they had been sent to the insurance company.
15. Item 6(b) of the 2002/2003 form provided:-

“6(b) - Has the firm, or any solicitor in the firm (past or present) been made or may be the subject of an investigation by the Disciplinary Tribunal or Office for the Supervision of Solicitors? If “yes” please attach details. YES / NO”

The Respondent answered the same by circling “NO”.

16. The form was dated 22nd August 2003. When asked by the Investigation Officer if, as a matter of professional integrity the Respondent should have disclosed Mr Randall's role, the Respondent replied “looking at it now probably should have done”.
17. Item 6 of the proposal form for 2003-2004 provided YES/NO tick boxes for the following queries:-

“6. Practising Certificate. Has any fee earner in the firm:

- ever been refused a Practising Certificate

- ever been granted a conditional Practising Certificate
- been the subject of a cost or penalty order
- been reprimanded by the Disciplinary Tribunal
- practised in a firm subject to an OSS investigation or an investigation or an intervention by any regulatory department of the Law Society
- had a civil or criminal judgment against him/her”

The Respondent answered NO to all the above.

18. The declaration to the form provided inter alia “I declare that to the best of my knowledge or belief the particulars and statements given in this application and any other documentation and information provided in connection with this application are true and complete and this application, declaration, documentation and information will be the basis of the contract between the insured and the insurer. I declare that I have informed the insurer of all facts which are likely to influence the insurer in the acceptance or assessment of this insurance. I understand that failure to do so could invalidate this insurance. I accept that if I am in doubt whether any fact may influence the insurer I should disclose it”.
19. The Respondent denied that his replies were misleading or inaccurate given he did not view himself as employing Mr Randall. However, he went on to say that he “should inform his insurers or ask Mr Randall to leave the practice”.
20. In the Report the Investigation Officer noted the Respondent as saying that he had interpreted “fee earner” to mean an employee. In a subsequent letter to the Law Society dated 31st March 2004 the Respondent indicated that he had not said that, rather he had said that as Mr Randall was not his employee he did not consider it necessary to tick “YES” to the relevant question on the form. In a further letter from the Respondent dated 5th April 2004 in response to the following question:-

“At question 5 of the application form you state that the firm has one fee earner. Please can you comment on this answer in light of the number of fee earners referred to in the Forensic Investigation Report.”

the Respondent replied “Again, I took this to mean employed”.

Allegations (v) and (vi)

21. By letter dated 15th July 2005 the Law Society wrote to the Respondent in respect of his outstanding Accountant’s Report. The Respondent replied on 15th August 2005 indicating that his practice still held client money. By letter dated 6th September 2005 the Law Society wrote to the Respondent indicating that the records had been updated to show that the next Accountant’s Report would cover the period ending 31st August 2005, and would be due for delivery to the Law Society on or before 28th February 2006. The Report was not received by the due date or at all. The Law Society wrote to the Respondent by letter dated 13th March 2006 requesting the same without delay.
22. By letter dated 15th May 2006 the Law Society wrote to the Respondent in respect of the outstanding Accountant’s Report and seeking his explanation within 14 days. The Respondent did not reply and it was necessary for the Law Society to write again on

2nd June 2006. The Respondent failed to reply or provide explanation and the Report remained outstanding.

The submissions of the Applicant

23. The Respondent had in his correspondence, to which the Tribunal was referred, admitted allegations (ii), (iii) and (v). In relation to allegations (i) and (iv) the Respondent had written in correspondence to the Applicant:-

“I accept item 1(i) to the extent that he was seconded but I did not feel I employed him but accept that I left myself open to the allegation ... 1(iv) I deny I had any intention to do so as I did not believe I employed him. It was a genuine mistake”

(Letter received 9th January 2007.)

“I do not accept I employed or remunerated but accept he worked in the practice in secondment and in hindsight he should not of. I do not admit I deliberately misled the insurance company with a view to obtain lower premiums but again in hindsight I should have mentioned him.”

(Letter received 26th January 2007.)

“I can only reiterate that in hindsight that the secondment was incorrect but I do not believe I employed Mr Randall and certainly there was no intention to. For confirmation I do not accept that there was any intention to deceive the PI insurers.”

(Letter received 11th May 2007.)

24. In relation to allegation (vi) the Respondent wrote:-

“I received no such correspondence.

“I cannot remember receiving the letters. I would point out that I was certainly not myself during this period and was suffering from anxiety and depression and I may not have filed them etc but I cannot remember them or find them.”

25. In relation to the Accounts Rules breaches the Respondent was afforded an opportunity to deal with the updating of the accounts and the Investigation Officer had returned in August and December 2003 but only limited progress had been made.
26. Failure to keep accounts properly written up was a matter of concern. The accounts should reflect the accurate position.
27. Allegation (i) was a serious matter particularly given the mandatory nature of the penalty in respect of a substantiated allegation.

28. Section 41 required knowledge and it was important to note that the Respondent had actual knowledge in May or June 2002 (paragraph 12 above). Mr Randall was on secondment from September 2002.
29. Contrary to the position adopted by the Respondent that he had neither employed nor remunerated Mr Randall it was the Law Society's case that he had. The words "employ or remunerate" were to be widely interpreted. The fundamental purpose of Section 41 was to ensure that members of the public were protected from having their legal affairs conducted by a person employed or engaged in a solicitor's office who was himself a struck off or suspended solicitor, and to preserve the good reputation of the profession as a whole. The Respondent had conceded that he knew Mr Randall was a struck off solicitor but nonetheless allowed him to continue to work within his practice and employed or remunerated him in the widest sense.
30. The Tribunal was referred to the invoices from C&V to Cooks which bore the narrative "charges for salaried staff on secondment". The second invoice also referred to a charge for payroll administration. It was not known if C&V were providing other services but that did not impact on the allegations.
31. The Respondent had said that he had telephoned Professional Ethics but he had not produced an attendance note. It would have been easy for him to seek written consent as required by Section 41. It was not known what the Respondent had said to Professional Ethics but it was surprising that he had not seen fit to confirm the matter in writing.
32. The Tribunal was referred to the earlier Tribunal case of Cunnew, solicitor, (No. 6134/1992) and to the case of Coxall and others (No. 8401/2001) in support of his submissions. The Tribunal was invited to find allegation (i) proved. The Respondent now appeared to accept that what he had done had not been appropriate.
33. In relation to allegation (iv) it was not alleged that the Respondent had intended to obtain a pecuniary advantage, rather that he should have informed his insurers of the situation as he now accepted (paragraph 23 above). He had failed to disclose material information to his insurers. He should have answered all questions fully, openly and truthfully.
34. Although the Respondent in subsequent correspondence had refuted the comment noted by the Investigation Officer (paragraph 20 above) his subsequent comment in his letter dated 5th April 2004 contradicted his assertion. In any event the declaration on the proposal form made clear that if there was any doubt whether any fact might influence the insurers it should be disclosed.
35. In relation to allegation (vi) the Respondent had said that he might not have received the correspondence but he was not clear on this. The correspondence had been sent to the correct address having been notified of a change of address.
36. In the absence of the Respondent and in order to do justice to the Respondent's position the Tribunal was asked to read all the correspondence which had been received from the Respondent and was referred to that correspondence.

37. Following the decision of the Tribunal the Applicant sought his costs in a fixed sum. A schedule had been served on the Respondent which the Applicant had subsequently slightly reduced. There had been no response to the schedule. The Respondent had indicated in correspondence that he was an undischarged bankrupt but this was a matter which was relevant to enforcement. The Applicant sought costs in the sum of £11,750.

The Findings of the Tribunal

38. Allegations (ii), (iii) and (v) were admitted and the Tribunal found them to have been substantiated.
39. In relation to allegation (i) the Tribunal carefully considered the documentation including the correspondence from the Respondent. The Tribunal also noted the cases referred to by the Applicant. Mr Randall who was a struck off solicitor had been working in the Respondent's practice. This was the mischief which Section 41 sought to attack. The Respondent had known Mr Randall was a struck off solicitor. "Employed" or "remunerated" were to be interpreted widely. The arrangement between the Respondent, C&V and Mr Randall amounted to remuneration by the Respondent at the very least. There was no record of what the Respondent had said to Professional Ethics or what Professional Ethics might have said to the Respondent, if such conversation had ever taken place. He had not sought the written consent required by Section 41 and had deliberately circumvented Section 41. Allegation (i) was substantiated.
40. In relation to allegation (iv) the Respondent's replies to his professional indemnity insurers had been inaccurate and misleading. He had been required to disclose all material facts or any facts where he had any doubt as to whether they might influence the insurer. The Tribunal did not accept the Respondent's assertion that he had made a mistake in this regard. Mr Randall was undertaking fee earning work within the practice and this should clearly have been disclosed to his insurers. Allegation (iv) was substantiated.
41. The Tribunal found allegation (vi) to have been substantiated. In his letter received on 26th January 2007 by the Applicant, the Respondent had indicated that he was unclear whether he had received the letters or not. The Tribunal noted that the letters had been sent to the correct address which was indeed the address from which the Respondent had recently sent correspondence.
42. The allegations against the Respondent were serious, particularly the deliberate circumventing of section 41 and the misleading of the indemnity insurance provider. The Respondent was not present to provide mitigation. The Tribunal considered carefully any factors in his correspondence which might go to mitigation and noted that this was his first appearance before the Tribunal. The Tribunal was satisfied however that these matters were so serious that they damaged the reputation of the profession. The breach of Section 41 was particularly serious as the Section was designed to protect the public. A conscious flouting of its provisions put the public at risk. In all the circumstances it was right that the Respondent's name be struck off the Roll of Solicitors. The Tribunal accepted the Applicant's submissions as to costs and would order costs in a fixed sum.

43. The Tribunal ordered that the Respondent Colin Cook (whose address is Ashby De La Zouch, Leicestershire), solicitor, be struck off the Roll of Solicitors and ordered him to pay the Applicant's costs fixed in the sum of £11,750.

DATED this 3rd day of August 2007
on behalf of the Tribunal

R J C Potter
Chairman