

IN THE MATTER OF STEPHEN JOHN ROBERTS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr R Nicholas
Mrs V Murray-Chandra

Date of Hearing: 7th August 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire, SG14 1BY on 10th January 2007 that Stephen John Roberts of Tilbury, Essex, 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 21st June 2007 the Applicant made a supplementary statement containing a further allegation. The allegations set out below are those contained in the original and supplementary statements.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following particulars:

- (i) that he, being a solicitor, had conducted himself in a manner which compromised or impaired his duty to act in the best interests of his clients, his good repute or that of the profession and his proper standard of work or was likely to do so;
- (ii) that he had failed to deal promptly or substantively with correspondence from The Law Society;
- (iii) that he had failed to comply with Orders made with Law Society Adjudicators.

The application was heard at the Court Room 3rd Floor, Gate House, 1 Farrington Street, London, EC4M 7NS on 7th August 2007 when Stephen John Battersby appeared as the Applicant and the Respondent appeared in person.

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, Stephen John Roberts of Tilbury, Essex, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 7th day of August 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,200.00.

AND

The Tribunal Orders that the Law Society's Adjudicator's directions dated 9th September 2005 in respect of Mr G and 7th November 2005 in respect of Miss T be treated for the purposes of enforcement as if they were Orders of the High Court.

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

1. The Respondent, born in 1950, was admitted as a solicitor in 1984. At the material time he practised on his own account as Stephen Roberts & Co at Tilbury, Essex.
2. On 27th July 2004 The Law Society's Head of Forensic Investigations ("the HFI") carried out an inspection of the Respondent's books of account. The HFI's Report dated 9th August 2004 was before the Tribunal.
3. The Respondent had told the HFI that he was considering closing his practice in the near future. He did close his practice late in 2004. The Respondent's books of account were found to be in compliance with the Solicitors Accounts Rules.
4. Because of a lack of action by the Respondent, his client, Mr W, had instructed new solicitors and had referred the matter to The Law Society. The Respondent had not progressed the matter and relevant correspondence, which the Respondent was unable to locate, had not been placed on the file. The Respondent was unaware of the complaint or of the fact that the matter had been referred to other solicitors. He had not seen an e-mail regarding the matter sent to him by The Law Society Regulation Unit on 9th July 2004.
5. On 11th August 2004 The Law Society wrote to the Respondent seeking his explanation about Mr W's case, asking for a response within 14 days. No such response was received. A further letter was sent to the Respondent on 2nd September 2004 after The Law Society had made unsuccessful attempts to contact him by telephone and e-mail. A response within eight days was required but none was forthcoming.
6. Nothing had been heard from the Respondent by 10th December 2004 and on that date The Law Society wrote to him again seeking a response by 16th December 2004. The

respondent replied by fax on 15th December 2004 to say that he had resolved the issues relating to Mr W and enclosing a copy of a letter which he had sent to Mr W's new solicitors on 2nd November 2004. He informed The Law Society that he had closed his firm and was no longer practising as a solicitor. He did not give an explanation for his conduct but said that he would do so by 22nd December 2004. He confirmed that by the same date he would respond to complaints from three other clients, Mr G, Mr T and Mr M. The Law Society, by their letter to him of 17th December 2004 confirmed that they expected him to do this and requested further information as to his arrangements for closing the firm.

7. The Respondent did not write to The Law Society until 14th January 2005. When he said an illness had prevented him from dealing with matters as he had hoped but he would respond about the complaints by 24th January 2005. He did not do so. On 26th January the Respondent sent a letter saying that he had 'seriously underestimated' the time he needed to respond. He said that he would do so fully by 31st January 2005, but on 2nd February he explained that he had had a 'further small health set back' and would deal with the matters by 1.00pm on 4th January 2005 (it was presumed that he meant 4th February).
8. No response was received by 4th February. The Law Society wrote to the Respondent on 3rd March 2005 referring to three complaints and a further one by Mr S. They asked for his urgent response. On 7th March 2005 the Respondent sent a short letter to say that he would deal with the matter of Mr G and return his file by 9th March and would also return the necessary documents of Mr M and Mrs S by the same date. It became apparent that the Respondent had already dealt with the matter of Mr T having written to The Law Society regarding this on 15th February 2005.
9. By 16th March 2005 The Law Society had not heard further from the Respondent and wrote to him again to inform him that the matter was to be referred for Formal Adjudication. He replied on 24th March 2005 saying that he expected to be able to respond fully by 29th March. He failed to do this but wrote on 31st March to say that he was in the process of resolving matters. On the same date The Law Society decided to intervene into the Respondent's practice and to refer his conduct to the Tribunal. The Respondent wrote on 5th April 2005 confirming that he was taking steps to deal with the situation.
10. On 9th September 2005 an Adjudicator of The Law Society found that the Respondent had failed to take action and progress the matter on behalf of his client, Mr G. He was directed within seven days to pay £750 compensation and refund £175 costs to the client and pay the costs of The Law Society in the sum of £460.24. The Respondent was informed of this decision on 21st September 2005. The Law Society pressed the Respondent for action by letter of 24th October 2005.
11. On 7th November 2005 an Adjudicator of The Law Society decided that there had been a complete lack of service by the Respondent to his client, Miss T and directed that he should pay her £500 compensation and costs to The Law Society of £418.40 within seven days. The Respondent was notified by letter dated 15th November 2005. He did not make payment. The Law Society reminded the Respondent of this requirement on 3rd January 2006.

12. The Respondent had not complied with either of the Adjudicators' awards. The Applicant accepted that he was not able to prove that the Respondent received The Law Society's letters dated 11th November 2005 or 3rd January 2006.

The Submissions of the Applicant

13. The Applicant did not allege dishonesty against the Respondent. His conduct had fallen below that required of a solicitor and had caused anxiety to clients as well as inconvenience to The Law Society.
14. The Tribunal was invited to make an order directing that the awards in respect of inadequate professional services made by Adjudicators of The Law Society against the Respondent should be treated for the purposes of enforcement as if they were Orders of the High Court.
15. The Applicant recognised that the Respondent had suffered mental health related difficulties. The Respondent had not produced a psychiatric report but the Tribunal did have some evidence before it as to the Respondent's mental condition including a letter from the chief executive of LawCare. It had been hoped at the outset that the Tribunal would accept that the Respondent suffered from mental ill health and that the matter could proceed without an adjournment to enable full psychiatric details to be provided.

Submissions of the Respondent

16. At the opening of the hearing the Respondent had indicated that he had significant mental health difficulties. He accepted that the matter should proceed even though he had not provided a psychiatric report. The Respondent noted that both the Applicant and the Tribunal accepted that the Respondent had suffered significant mental health difficulties.
17. The Respondent explained that he had been estranged from many aspects of life neglecting himself and hiding away often unable to face the post or telephone calls. He believed he had suffered from a mental breakdown leaving him unable to deal with such aspects of life and his condition seemed to include clinical depression and a phobia which prevented him from dealing with ordinary matters and had prevented the Respondent from obtaining medical help in the past.
18. The Respondent had received help and support from LawCare and from the Samaritans.
19. The Respondent believed he had made significant progress since he was last assessed by a consultant psychiatrist. He was able to attend the Tribunal hearing.
20. The public was protected because the Respondent's practice had been subject to an intervention and the Respondent was not currently practising. The Law Society would have powers to qualify any practising certificate should the Respondent make an application for one.

21. The Respondent accepted responsibility for his own actions and inactions. His mental health was an important factor in his failures. He also understood that in the event of health problems interfering with his ability to fulfil his professional duties, it was his responsibility to obtain treatment. The Respondent understood that it was a known feature of clinical depression that it could inhibit or prevent the sufferer from obtaining treatment. That had been his experience.
22. The Respondent truly believed that a phobia had stopped him from dealing with some matters resulting in his professional failures. It had also stopped him from obtaining medical help.
23. The Respondent anticipated that in considering the public interest, the protection of the public would be paramount. The Respondent had absolutely no intention of ever practising again and he wished to have his name removed from the Roll. He was willing to undertake to apply to have his name removed. His determination not to practise again was for the good of the public and for the sake of the Respondent's own health.

The Findings of the Tribunal

24. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
25. Following a hearing on 31st May 2001 the Tribunal found an allegation that the Respondent had been guilty of conduct unbecoming a solicitor in that he failed to comply with a first instance decision of an Adjudicator dated 2nd August 2000, upheld on appeal determined on 25th October 2000, and made the subject of a decision of the Chief Adjudicator on 28th November 2000. In its findings dated 26th July 2001 the Tribunal said:

" The Tribunal found the allegation to have been substantiated, indeed it was not contested.

The Tribunal had before it no formal medical evidence as to the respondent's condition but they were able to accept that his wellbeing had been seriously affected by family and financial pressures. The Tribunal was pleased to note that the respondent had sought assistance in connection with the stress which he had suffered. The Tribunal recognise that complaint had arisen in connection with only one matter which appeared to be the type of work not routinely undertaken by the respondent and in a matter which he had taken on against his better judgement as a kindness to a client in a difficult position.

Despite the mitigating circumstances, the failure by a solicitor to comply with a direction made by his own professional body is not a matter to be taken lightly. The Tribunal have given the respondent credit for having instructed another solicitor to deal with the matter on his behalf. Nevertheless the Tribunal's disapproval of his behaviour has to be marked by a financial penalty and the Tribunal imposed a fine upon the respondent in the sum of £1,000 and further ordered him to pay the applicant's costs in a fixed sum.

The Tribunal wish to express concern as to the respondent's health and well being and as to whether he will in the future be able to withstand the pressures of private practice, particularly the additional pressures which fall upon a solicitor who is a sole principal. The Tribunal hope the Law Society will take steps to ensure that the respondent is able to cope with the day to day pressures of running a practice before issuing a Practising Certificate to him."

26. The Tribunal had taken into account the fact that no dishonesty had been alleged against the Respondent and also had taken note of the important fact that the Respondent's books of account had been fully in order and the Tribunal had given the Respondent full credit for that. The Tribunal accepted that the Respondent did not enjoy good mental health and this was the crucial factor in his failing to deal with the matters that were the subject of the allegations.
27. The Tribunal considered that the Respondent was not fit to practise and in all the circumstances considered that in order to protect the public it would be both appropriate and proportionate to order that the Respondent be suspended from practice for an indefinite period on the basis that the Tribunal would be most unlikely to consider any application to have the indefinite period brought to an end unless the Respondent could provide formal expert evidence that he had fully recovered his mental health and was fit to practise as a solicitor. The Tribunal noted the Respondent's indication that he in fact never wished to practise as a solicitor again and that he wished to remove his name from the Roll. In the particular circumstances of this case the Tribunal hoped, despite the order made by the Tribunal, that The Law Society would give favourable consideration to an application by the Respondent that his name be removed from the Roll of Solicitors.
28. It was right that the Respondent pay the costs of and incidental to this application and enquiry and the Tribunal fixed the costs in the sum of £3,200, the figure agreed between the parties.

Dated this 16th day of October 2007
On behalf of the Tribunal

W M Hartley
Chairman