

IN THE MATTER OF MALCOLM REGINALD BROWN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr J P Davies
Mr M G Taylor CBE

Date of Hearing: 17th October 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 Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London W1U 2PQ on 16th April 2007 that Malcolm Reginald Brown of CS Law of First Floor, Arriva House, Delta Way, Cannock, Staffordshire WS11 0XB, 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.

Robert Simon Roscoe further applied that a direction be made by the Tribunal that the direction of The Law Society relating to inadequate professional services dated 8th February 2007 made in respect of the Respondent by which the Respondent was Ordered to pay compensation of £785 to Mr GM be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

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

- 1.a That he failed to act in the best interests of his client, FAS, by failing to ensure the safe and prompt return of files to such client in breach of Rule 1 of the Solicitors Practice Rules 1990;

- 1.b That his failure to deliver files to his client FAS both promptly and following the decision of The Law Society's Adjudicator impaired or compromised his good reputation and that of the solicitors' profession in breach of Rule 1 of the Solicitors Practice Rules 1990;
- 1.c That he practised, or held himself out to practise, as a solicitor without holding a current practising certificate contrary to Sections 1 and 1A of the Solicitors Act 1974;
- 1.d That he failed to disclose when requested details of his indemnity insurer in breach of Rules 16 and 18 of the Solicitors Indemnity Insurance Rules 2005 and Rule 1 of the Solicitors Practice Rules 1990;
- 1.e That he failed to demonstrate compliance with Rules 6(1) and 3 of the Solicitors Incorporated Practice Rules 2004 in breach of Rule 7(7) of the Solicitors Practice Rules 1990;
- 1.f That he failed to comply with a direction of The Law Society's Adjudicator and that by such failure had been guilty of conduct unbecoming a solicitor;
- 1.g That he failed to deal promptly and substantively with correspondence from The Law Society in breach of Rule 1 of the Solicitors Practice Rules 1990.

By a supplementary statement of Robert Simon Roscoe dated 14th June 2007 it was further alleged against the Respondent:

- 2.a That since 31st October 2006 he had continued to hold client monies as a solicitor without holding a current practising certificate contrary to Section 1(c) of the Solicitors Act 1974;
- 2.b That he failed to inform the Solicitors Regulation Authority that he had closed his firm CS Law contrary to Section 84 of the Solicitors Act 1974;
- 2.c That knowing he did not hold a current practising certificate he continued to use professional notepaper purporting to show he was in practice as a solicitor in breach of Rules 1 and 2 of the Solicitors Practice Rules 1990 and the Solicitors Publicity Code 2001;
- 2.d That he withdrew money from his solicitors client account whilst not holding a practising certificate in breach of Rule 23(1)(a) of the Solicitors Accounts Rules 1998;
- 2.e In breach of Rules 4 and 5 of the Solicitors Indemnity Insurance Rules 2006 he failed to take out and maintain qualifying insurance under the Solicitors Indemnity Insurance Rules 2006 during any indemnity period on or after 1st October 2006;
- 2.f In breach of Rule 8 of the Solicitors Indemnity Insurance Rules 2006 after having failed to take out and maintain qualifying insurance under the Solicitors Indemnity Insurance Rules 2006 he failed to apply to enter the Assigned Risks Pool prior to the start of the relevant indemnity period to provide cover for any indemnity period on or after 1st October 2006;

- 2.g That he failed to deliver to The Law Society an Accountant's Report in respect of his practice as a solicitor for the period ending 31st July 2006 contrary to Section 34 of the Solicitors Act 1974;
- 2.h That he failed to comply with a professional undertaking given to Finance Direct (UK) Ltd in breach of Rule 1 of the Solicitors Practice Rules 1990.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17th October 2007 when Robert Simon Roscoe appeared as the Applicant and the Respondent did not appear and was not represented.

At the commencement of the hearing the Respondent gave the Tribunal details of the steps he had taken to ensure that the Respondent continued to be at the same address in Cannock as referred to above, this being the address to which Civil Evidence Act Notices and notification of the hearing date had been sent. The Tribunal was satisfied from the information given by the Applicant that the Respondent continued at the same address and that the relevant Notices had been served there and the notification of hearing date sent there. The Tribunal Ordered that the matter should proceed in the absence of the Respondent.

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

The Tribunal Orders that the Respondent, Malcolm Reginald Brown of CS Law, First Floor, Arriva House, Delta Way, Cannock, Staffordshire WS11 0XB, 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 £7,200.

The Tribunal Orders that the Direction of the Law Society relating to inadequate professional services dated 8th February 2007 made in respect of the Respondent, by which the Respondent was ordered to pay compensation of £785 [to Mr. G M] be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

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

1. The Respondent, born in 1946, was admitted as a solicitor in 1971 and his name remained on the Roll of Solicitors. At the relevant time the Respondent practised on his own account as CS Law of First Floor, Arriva House, Delta Way, Cannock, Staffordshire WS11 0XB.

Failure to deliver files to FAS

2. In 2004 FAS instructed the Respondent to take legal action to recover monies owed to FAS. In 2005 FAS terminated their instructions and sought the return of their files in respect of two companies, T Ltd and PF Ltd. Following the Respondent's failure to return those files FAS contacted The Law Society.
3. In telephone conversations with The Law Society the Respondent accepted he held FAS's files and that he would post them to FAS. The Respondent told The Law Society that he had posted the files to FAS on 30th September 2005. FAS did not receive the files. The Respondent subsequently told The Law Society that he had

retained copies of the "essential elements" of the files and would send them to FAS on either 8th November or 10th November 2005. FAS did not receive the copy files.

4. On 20th February 2006 the Respondent wrote to The Law Society. He accepted that he had originally received FAS's T Ltd file but had no recollection of receiving the PFR Ltd file, unless it had been contained in another file. The Respondent reasserted that he had returned the files to FAS.
5. Subsequently following their receipt from the Respondent on 23rd June 2006 of other books and records in his possession, FAS discovered within those documents some records relating to T Ltd.
6. On 21st August 2006 the Respondent wrote to The Law Society's agent and informed them that a representative of FAS had collected the T Ltd file from him. This was the first time that this information had been asserted by the Respondent and it was at variance with his previous assurances to The Law Society that he had posted the files to FAS.
7. On 18th September 2006 The Law Society sought an explanation from the Respondent regarding his failure to deliver the files and the discrepancy between the various explanations given regarding the return of the files. The Respondent failed to reply to both this letter, subsequent letters and generally.
8. On 29th November 2006 the Adjudicator referred the Respondent's conduct to the Tribunal.

Practising uncertificated

Failure to disclose details of indemnity insurer

9. The Respondent failed to apply for a practising certificate for 2004-2005. The Respondent was permitted to continue in practice by virtue of his practising certificate for the year 2003-2004 until 4th January 2005 when The Law Society terminated that practising certificate in the absence of renewal by the Respondent. The Respondent subsequently renewed his practising certificate from 25th January 2005.
10. Further enquiries made by The Law Society indicated that the Respondent did not hold a practising certificate between 24th April 1997 and 31st October 2000.
11. In September 2006 The Law Society received a complaint made by B & Co, solicitors, on behalf of Mr DW. B & Co forwarded a copy letter sent by Mr DW to the Respondent dated 25th October 2004. Mr DW pointed out to the Respondent that he had accepted instructions and acted in a probate matter during the period 24th April 1997 and 31st October 2000. Mr DW reminded the Respondent that in January 2000 the Respondent had written to Oxfordshire Social Services describing himself as Mr DW's father's lawyer and in December 1999 and May 2000 the Respondent had written to Mr DW about his professional fees.

12. The Respondent wrote to Mr DW on 16th January 2005, and in his letter made further reference to fees. This letter was written by the Respondent from 3 High Street, Cheslyn Hay, Walsall WS6 7AB.
13. B & Co wrote to the Respondent on 31st July 2006 seeking details of his indemnity insurance for the relevant period. The Respondent failed to disclose such details.
14. The Law Society wrote to the Respondent on 20th November 2006 to ascertain if he had either practised or held himself out to practise between 4th January 2005 and 25th January 2005 and in respect of the allegations raised by B & Co. The Respondent never responded to that enquiry.
15. This matter was referred to the Tribunal on 15th February 2007.

Failure to demonstrate compliance with the Solicitors Incorporated Practice Rules

16. In January 2006 The Law Society received information linking the Respondent to various public companies. The Law Society made a search of Companies House and obtained a search record linking the Respondent with registered public companies including CS Law Limited, Creditors Services Limited and Creditor Support Services Limited.
17. The Law Society received details of a complaint by Mr GM and Mrs MM in respect of debt collection work carried out on their behalf. The work was originally conducted by Creditor Services of 3 High Street, Cheslyn Hay, Walsall WS6 7AB. This was the Respondent's practising address.
18. Documents received from Mr GM showed that Creditor Services initially wrote to the debtor's solicitors on behalf of Mr GM but that on 14th March 2005 the Respondent issued proceedings in the Northampton County Court as the claimant's solicitor, CS Law of 3 High Street, Cheslyn Hay, Walsall, WS6 7AB. The Respondent wrote to Mrs MM on 30th March.
19. On 18th October 2006 and again on 6th November 2006 the Law Society wrote to the Respondent about the matter. The Respondent never responded to that enquiry.
20. This matter was referred to the Tribunal on 15th February 2007.

Failure to comply with Adjudicator's Order

21. On 8th February 2007 The Law Society's Adjudicator made a finding of inadequate professional services against the Respondent. The Adjudicator Ordered that within seven days the Respondent:
 - (a) pay Mr GM compensation of £550, and;
 - (b) pay Mr GM a refund of the fees paid to the Respondent in the sum of £235.
22. The Law Society wrote to the Respondent about the Adjudicator's Order on 12th February and 20th February 2007.

23. The Respondent failed to comply with the Order.
24. On 28th February 2007 the Adjudicator referred the Respondent's conduct to the Tribunal as he failed to comply with the 8th February 2007 decision within 14 days.
25. On 3rd January 2007 an Investigation Officer of The Law Society attended the Respondent's practice to inspect the Respondent's books of account and other documents. The subsequent Report dated 31st January 2007 was before the Tribunal. The Report noted the matters set out at paragraphs 26 to 29 below.
26. The Investigation Officer ascertained that the Respondent had given up his practising certificate on 31st October 2006 and ceased representing himself as a practising solicitor from that date. The Respondent produced no documentation to support his contention that he had notified The Law Society of this.
27. The Investigation Officer ascertained that the Respondent appeared to be still using professional notepaper.
28. The Investigation Officer noted that the Respondent continued to hold client money in a client bank account and that the Respondent had continued to authorise cheques which she scheduled. The Respondent accepted that he had done so.
29. Despite continuing to hold client money the Respondent had neither arranged indemnity insurance nor applied to enter the Assigned Risks Pool.

Failure to deliver an Accountant's Respondent Report

30. The Respondent's financial year for the period ending 31st July 2006 should have been delivered to The Law Society on or before 31st January 2007. That Report was not delivered and had not been delivered since. The Respondent had not sought an extension. The Respondent had continued to hold client money.

Failure to comply with an undertaking

31. On 26th May 2006 the Respondent wrote to Finance Direct (UK) Ltd on behalf of his client. He indicated that although judgment had been obtained against a Mr GO, if cleared funds in the sum of £1,232.20 were received he would contact the Willesden County Court and ask that the court cancel the interim charging order on Mr GO's property and that he would then apply to the Land Registry for the removal of the registration of the interim charging order, originally registered by him on behalf of his client.
32. In June 2006, on behalf of their client, a further mortgagee of Mr GO's, SLP solicitors redeemed the original charges on Mr GO's property. SLP expected that the Respondent would take appropriate steps to remove the interim charging order. SLP wrote to the Respondent about the matter on 5th July, 4th August, 24th August, 15th September, 20th October, 14th November, 7th December and 13th December 2006. The Respondent failed to act in accordance with his undertaking and also failed to respond to or acknowledge any of SLP's letters.

The Submissions of the Applicant

33. The Respondent was not attending and had not responded to the Tribunal.
34. Allegations 1.a and 1.b related to a long and weary history showing correspondence from FAS attempting to obtain information. The matter had never been resolved.
35. For a short though serious period in January 2005 the Respondent had practised uncertificated. There had been no specific claims of malfeasance except the allegation itself. The Respondent had not provided an explanation.
36. The Respondent had written to Mr DW about professional fees at a time when he was without a practising certificate. There was no explanation by the Respondent in response to complaints by B & Co and DW.
37. In relation to allegation 1.e the Respondent had breached the Rules referred to in the allegation as set out in the letter from The Law Society to the Respondent dated 18th October 2006. The Respondent had provided no response or explanation.
38. In relation to allegation 1.f the Order of the Adjudicator had never been complied with and the client had never been paid. The Applicant sought an enforcement order in respect of this matter.
39. The Law Society had written on various occasions on all of the above matters. The Respondent had adopted the habit of not responding and of giving no explanation. The Applicant had exhibited the letters to show how many opportunities had been given to the Respondent to respond.
40. The Respondent had told the Investigation Officer that he had closed his firm but there was no evidence that he had told The Law Society.
41. He accepted that he had withdrawn money from client account. The Applicant was not suggesting dishonesty on the part of the Respondent but he should not have handled client money without holding a practising certificate. On the basis that he had held client money he should also have arranged indemnity insurance.
42. There had been no response from the Respondent in respect of allegations 2.a to 2.h although he had been provided with all the relevant information including the Investigation Officer's Report.
43. The Applicant was not aware of any claims on the Compensation Fund or on the Respondent's insurance.
44. The Applicant sought his costs in the sum of £7,200 which was a reduction on the amount set out in the summary of costs he had sent to the Respondent.

The Findings of the Tribunal

45. The Tribunal considered carefully the documentation and the submissions of the Applicant. In the absence of any evidence or submissions put forward by the

Respondent the Tribunal was satisfied from the documentation available to it that all the allegations were substantiated.

46. There was no mitigation before the Tribunal on behalf of the Respondent. It appeared to the Tribunal that the Respondent had fallen far below the accepted standards of the profession. He had failed to comply with a direction of his professional body. He had practised without a practising certificate and without insurance. He had not supplied an Accountant's Report to The Law Society. The requirement that solicitors provide Accountant's Reports was an important method of giving clients confidence that their money was being properly handled by solicitors. Despite having no practising certificate or insurance the Respondent had continued to deal with matters and handle clients' money. He had not replied to correspondence from his Regulatory Body despite numerous opportunities to do so. He had damaged the reputation of the profession in the eyes of his clients and the public and it was right that he no longer be a member of the profession.
47. The Tribunal would also Order that he pay costs in the fixed sum sought by the Applicant.
48. The Tribunal expressed some concern regarding the large probate case in which the Respondent appeared to have acted while uncertificated. The Applicant explained that the client had instructed new solicitors, B & Co, who had not reported any further malfeasance but said that he would ask The Law Society to confirm the position regarding client money.
49. The Tribunal Ordered that the Respondent, Malcolm Reginald Brown of CS Law, First Floor, Arriva House, Delta Way, Cannock, Staffordshire WS11 0XB, 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 £7,200.
50. The Tribunal Ordered that the Direction of the Law Society relating to inadequate professional services dated 8th February 2007 made in respect of the Respondent, by which the Respondent was ordered to pay compensation of £785 to Mr. G M be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

Dated this 14th day of December 2007
On behalf of the Tribunal

D J Leverton
Chairman