

IN THE MATTER OF ELLEN JAYNE GODSELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. L. N. Gilford (in the chair)
Mr. D. Green
Mr. M. C. Baughan

Date of Hearing: 12th February 2008

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 of Victor Lissack, Roscoe & Coleman, 70 Marylebone Lane, London W1U 2PQ on 17th September 2007 that Mrs Ellen Jayne Godsell, solicitor, Park Howard Avenue, Llanelli, 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 application in September 2007 had been made also in respect of the Second Respondent David Frederic Godsell. The Tribunal was notified that Mr Godsell had died on 19th October 2007. The Tribunal consented to the deletion of his name from the proceedings.

The allegations against Mrs Godsell were that she had been guilty of conduct unbecoming a solicitor in the following particulars namely:-

- (a) That she permitted a withdrawal to be made from client account in excess of money held for the client in breach of Rule 22 of the Solicitors Accounts Rules 1998.
- (b) That she permitted the withdrawal of money held on behalf of a client for the benefit of another client without permission and in breach of Rule 22 of the Solicitors Accounts Rules 1998.

- (c) That having made withdrawals from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 she failed to promptly remedy that breach upon discovery in breach of Rule 7 of the Solicitors Accounts Rules 1998.
- (d) That she failed to maintain proper accounting records in breach of Rule 32 of the Solicitors Accounts Rules 1998.
- (e) That knowing that Mr David Frederic Godsell (Mr Godsell) did not hold a current practising certificate she continued to use professional notepaper purporting to show both were in partnership as solicitors in breach of Rules 1 and 2 of the Solicitors Practice Rules 1990 and the Solicitors' Publicity Code 2001.
- (f) That she failed to act in the best interests of their client in breach of Rule 1 of the Solicitors Practice Rules 1990.
- (g) That she (together with Mr Godsell) failed to deliver to The Law Society an Accountant's Report in respect of their practice as solicitors for the period ending 31st March 2006 (due to be delivered on or before 30th September 2006) contrary to Section 34 of the Solicitors Act 1974.
- (h) That she failed to deal promptly and substantively with correspondence from The Law Society.

In a supplementary statement made by the Applicant dated 5th February 2008 the following additional allegation was made against Mrs Godsell namely that she failed to deliver and/or delayed in delivering to the Solicitors Regulation Authority an Accountant's Report in respect of her firm, Godsell's Solicitors, for the periods ending 31st March 2007 and 30th September 2007 contrary to Section 34 of the Solicitors Act 1974 (as amended) and the Rules made thereunder.

(The Respondent had agreed to the attenuation of notice in respect of the supplementary statement)

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 12th February 2008 when Robert Simon Roscoe appeared as the Applicant and the Respondent was represented by Alan T Jenkins, solicitor, consultant with Gomer Williams & Co Limited of 19 John Street, Llanelli, Carmarthenshire, SA15 1UP.

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

The Tribunal Orders that the Respondent, Ellen Jayne Godsell of Park Howard Avenue, Llanelli, Carmarthenshire, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 12th February 2008 and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,800.00.

The evidence before the Tribunal included the admissions of the Respondent.

The facts are set out in paragraphs 1 - 10 hereunder:-

1. Mrs Godsell, born in 1956, was admitted as a solicitor in 1983. Her name remained on the Roll of Solicitors. Mrs Godsell practised in partnership with her late husband under the style of Godsell's solicitors of Park Howard Avenue, Llanelli.
2. On 7th March 2007 Investigation Officers from The Law Society (The IOs) attended the Respondent's practice to inspect the books of account and other documents. The IOs' report dated 30th March 2007 was before the Tribunal.
3. The IOs found a shortage on client account of £15,651.07. The IOs were unable to identify the basis of £13,751.07 of the shortage. The Respondents had not been able to replace the shortage promptly but made arrangements for £13,405.07 to be restored to client account on 27th June 2007. Mrs Godsell indicated that the remaining balance of £2,246.00 would be credited within two weeks of 9th July 2007. There had been no notification that that had been done.

Breach of Rule 22 SAR 1998

Failure to act in the best interests of their clients

4. The Respondent's firm had acted for Mr C in his purchase of a property. At the date of completion, 24th November 2006, the firm had insufficient funds in client account to effect completion. Mrs Godsell had transferred £4,030.00 from monies held in a designated deposit account in respect of a probate for another client, with which Mr C had no connection. The executor's clients had no knowledge of Mrs Godsell's action. They had not given their consent.
5. Mr C made up the balance of the sum required to complete on 28th November 2006, which was paid into client account. He also provided a further £2,246.00 to cover the firm's costs, the stamp duty and Land Registry fees, which totalled £1,900.00. The £2,246.00 was transferred to office account on 5th December 2006. At the time of the IOs' inspection the firm had not paid the stamp duty or the Land Registry fees. The title of Mr C and his mortgagees had not been protected. Mrs Godsell said she had forgotten to deal with these aspects of the matter.

Breach of Rule 32 SAR 1998

6. The IOs found that proper accounting records had not been maintained.
7. At the inspection date, 31 January 2007, the books of account were not in compliance with the Solicitors' Accounts Rules in that unauthorised withdrawals had been made from client account. A payment made from client account exceeded funds held on behalf of client. Client account cash book had been incomplete. Client account ledgers were incomplete. No reconciliations had been prepared. Accounting records had not been retained and not all of the client account paying-in slips and cheque stubs had been available and Mrs Godsell had explained that she had fallen behind in maintaining the firm's books of account because she had been overworked and her health had deteriorated.

Practising uncertificatedBreach of Rules 1 and 2 Solicitors Practice Rules 1990 and the Solicitors' Publicity Code 2001

8. Mr Godsell had failed to renew his practising certificate for 2006-2007. His previous practising certificate was terminated with effect from 5th January 2007. Mr Godsell's name remained on the firm's notepaper as a partner after the date when he no longer held a practising certificate.

Accountant's Report

9. An Accountant's Report in respect of the practice of Godsells for the period ending 31st March 2006 (due to be delivered on or before 30th September 2006) had not been delivered. There had been no response to letters addressed to the partners about this. Subsequent Accountant's Reports had fallen due but had not been filed.
10. On 8th August 2006 Godsells was the subject of a monitoring visit by a consultant instructed by the Professional Standards Unit ('PSU') of The Law Society. In her Practice Standards Report, the consultant indicated that she required the partners to provide a response. They did not provide a prompt or substantive response to the Report or to subsequent letters written by the Solicitors Regulation Authority.

Submissions of the Applicant

11. Mrs Godsell had admitted the allegations made against her. Initially they had been made against her and her professional partner, her late husband.
12. The facts spoke for themselves but the Tribunal would note that Mrs Godsell had used monies held on behalf of one unrelated client matter in order to effect the completion of a purchase by another client. It was accepted that the required monies had come into the firm a few days later.
13. The Applicant recognised that Mrs Godsell had experienced a number of difficulties. Upon the death of her husband and the subsequent death of her mother-in-law a short time thereafter she appeared to have "given up the ghost" with regard to her practice. Monies were held in client account and the office account had a credit balance. It was expected that The Law Society would within a short time after the hearing investigate the matter with a view of effecting an intervention into the practice of Godsells.
14. The Applicant sought the costs of and incidental to the application and enquiry. Mrs Godsell had accepted responsibility for those costs and had agreed the figure at £3,800.

Submissions made on behalf of Mrs Godsell

15. Until March 2007 Mrs Godsell practised in partnership with her late husband under the style of Godsells Solicitors from her home address from March 2007 to October 2007. Mr Godsell ceased to hold himself out as a partner following an Adjudicator's decision and Mrs Godsell continued to practise on her own until October 2007.

16. Mr Godsell died on 19th October 2007. Mr Godsell's dependence on alcohol was believed to be the root cause of his eventual demise. He also had a penchant for gambling.
17. Mrs Godsell, perhaps mistakenly and over optimistically, believed that despite the obvious consequences of her late husband's addiction she could cope with the practical day to day running of the practice on her own in spite of her own progressively debilitating condition. Mrs Godsell was diagnosed as suffering from Multiple Sclerosis in 1986 on her 30th birthday. Her debility had fluctuated in intensity from that time but had clearly increased as time had gone by.
18. A solicitor with a reputation second to none as a non-contentious lawyer in the Llanelli area had taken in Mrs Godsell as an equity partner. She treated him as her mentor and had been saddened by his death in November 2007. When his two sons entered the partnership, they were not prepared to allow Mrs Godsell to continue in the light of her diagnosed disability. It was then that she decided to work in partnership with her husband.
19. Initially there had been no difficulties but she had come to realise that she had not been coping. She faced the disciplinary hearing because of her determination to "prove the point" that she was still capable of acting as a solicitor handling non-contentious work.
20. Mrs Godsell accepted the allegations made against her which were indicative of a performance that fell below that expected of a solicitor in private practice. She accepted that she had failed to maintain proper accounting records.
21. Mrs Godsell believed that there was no shortfall on client account.
22. Mrs Godsell accepted the error of holding out her late husband as a partner when he did not have a practising certificate. She could not explain why she did not give this her immediate attention.
23. Mrs Godsell accepted that she did not deal with correspondence from The Law Society because she was experiencing a mixture of emotion on the one hand of being sure she could get around to it and deal with it and on the other hand burying her head. It was a matter of personal regret that her pride and determination overtook her sense of reality and responsibility for which she was profusely sorry.
24. Mrs Godsell had not made application to renew her practising certificate. She hoped she might be permitted to remove her name from the Roll voluntarily.
25. To add to her turmoil, Mrs Godsell's mother-in-law, her sole companion following the death of her husband, died on 5th January 2008 leaving her alone in the house.
26. Mrs Godsell owned the house in which she lived, subject to a mortgage. Her sole income was disability living allowance.
27. Mrs Godsell had little idea of her financial position as she was regularly approached by creditors of her late husband and her liability for these debts was uncertain.

28. Mrs Godsell had been a very competent non litigation lawyer. She had been left high and dry in a practice when new partners had come into her previous firm and they had dissolved the partnership because of her illness. She had endeavoured to practise in partnership with her husband and after he ceased to be certificated and indeed after his death had made the mistake of seeking to continue in practice as a sole principal. Mrs Godsell's clarity of mind was not what it might be.
29. The Tribunal was invited to consider the medical reports which had been placed before it.
30. The Tribunal was invited to give due weight to the excellent testimonials written in support of Mrs Godsell all of which attested to her competence and integrity.

The Findings of the Tribunal

31. The Tribunal found all of the allegations to have been substantiated. On the face of it the allegations made against Mrs Godsell were at the serious end of the scale. The Tribunal was very concerned by the fact that she had utilised money belonging to one client who was unconnected with a purchasing client in order to complete his purchase transaction.
32. The Tribunal has taken into account Mrs Godsell's very difficult personal circumstances. She suffers from ill health and has done so for some time, finding herself to be increasingly debilitated. She has suffered the death of her husband and shortly thereafter the death of her mother-in-law by whom she had been supported. The Tribunal noted that she had in effect "given up the ghost" and had some sympathy for the very sad and difficult position in which she found herself. Although owning a house, she was unclear as to what debts she might be required to meet and she was living on disability living allowance.
33. Tribunal accepted that she had been a victim of circumstance and had not deliberately flouted important rules and regulations relating to practice as a solicitor.
34. In all of the particular circumstances of this case the Tribunal ordered that Mrs Godsell be suspended from practice for an indefinite period of time. Mrs Godsell had agreed to pay the Applicant's costs and the Tribunal ordered her to pay them fixed in the agreed sum.

Dated this 19th day of March 2008

On behalf of the Tribunal

L N Gilford
Chairman